

Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER)

Report to
the Mississippi Legislature



A Review of the Board of Examiners for Social Workers and Marriage and Family Therapists

Without the safeguards of regulation, untrained or unethical social workers or marriage and family therapists could practice and place the public at risk. During this cycle review of the Board of Examiners for Social Workers and Marriage and Family Therapists, PEER found the following deficiencies in the board's regulatory practices:

- *Licensure*--The board's requirements regarding evaluation of supervised experience may not ensure that social worker and marriage and family therapist licensure applicants have acquired the experience needed for the practice of their professions. Also, the board does not maintain an accurate database of licensee information, which could allow individuals without a current license to continue to practice and put the public at risk.
- *Monitoring of Continuing Education*--Rather than verifying continuing education annually for all licensed marriage and family therapists, the board's policy is that it *may* randomly audit a percentage of licensees' continuing education hours. The board is not consistently conducting these random audits, and when it does, it conducts them after licenses have been renewed.
- *Complaints*--The board does not have an effective system for managing complaints, such as a current master record or log showing the status of complaints, minutes with a complete record of the board's actions taken on complaints, complete documentation in individual complaint files (including a record of actions), or a timeline or milestones for resolution of complaints.
- *Standards of Conduct*--Although the board has created a unified set of rules and regulations governing standards of conduct, several of these standards are unenforceable due to lack of statutory authority and vagueness.
- *Financial Management*--Although the Executive Director agreed to do so, the board has not implemented internal controls recommended by the State Auditor in 2003 to improve cash receipts accounting, controls over the bank clearing account, and timely deposits of cash receipts into the bank clearing account and State Treasury.

PEER also identified problem areas in state law that reduce the board's ability to protect the public: lack of provisions preventing current board members who also serve as members of nominating associations from participating in the nomination process for new board members, no explicit statutory authority for the board to conduct background checks on applicants, and no explicit statutory requirement for social workers to complete continuing education prior to license renewal. Also, the scopes of practice of social workers and marriage and family therapists are so broadly defined in state law that they often overlap and, in some cases, may overlap with the scopes of practice of other professions (e. g., psychology).

August 14, 2007

PEER: The Mississippi Legislature's Oversight Agency

The Mississippi Legislature created the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER Committee) by statute in 1973. A joint committee, the PEER Committee is composed of seven members of the House of Representatives appointed by the Speaker and seven members of the Senate appointed by the Lieutenant Governor. Appointments are made for four-year terms with one Senator and one Representative appointed from each of the U. S. Congressional Districts. Committee officers are elected by the membership with officers alternating annually between the two houses. All Committee actions by statute require a majority vote of four Representatives and four Senators voting in the affirmative.

Mississippi's constitution gives the Legislature broad power to conduct examinations and investigations. PEER is authorized by law to review any public entity, including contractors supported in whole or in part by public funds, and to address any issues that may require legislative action. PEER has statutory access to all state and local records and has subpoena power to compel testimony or the production of documents.

PEER provides a variety of services to the Legislature, including program evaluations, economy and efficiency reviews, financial audits, limited scope evaluations, fiscal notes, special investigations, briefings to individual legislators, testimony, and other governmental research and assistance. The Committee identifies inefficiency or ineffectiveness or a failure to accomplish legislative objectives, and makes recommendations for redefinition, redirection, redistribution and/or restructuring of Mississippi government. As directed by and subject to the prior approval of the PEER Committee, the Committee's professional staff executes audit and evaluation projects obtaining information and developing options for consideration by the Committee. The PEER Committee releases reports to the Legislature, Governor, Lieutenant Governor, and the agency examined.

The Committee assigns top priority to written requests from individual legislators and legislative committees. The Committee also considers PEER staff proposals and written requests from state officials and others.

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August 14, 2007

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On August 14, 2007, the PEER Committee authorized release of the report entitled **A Review of the Board of Examiners for Social Workers and Marriage and Family Therapists.**

A handwritten signature in cursive script that reads "Harvey Moss".

Representative Harvey Moss, Chair

This report does not recommend increased funding or additional staff.

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List of Exhibits

1. Board of Examiners for Social Workers and Marriage and Family
Therapists, Fee Schedule15

2. Board of Examiners for Social Workers and Marriage and Family
Therapists, Revenues and Expenses, FY 2002-FY 200615

A Review of the Board of Examiners for Social Workers and Marriage and Family Therapists

Executive Summary

Introduction

PEER reviewed the Mississippi Board of Examiners for Social Workers and Marriage and Family Therapists (hereafter referred to as “the board”). PEER conducted the review pursuant to the authority granted by MISS. CODE ANN. Section 5-3-57 et seq. (1972). This review is a “cycle review,” which is not driven by specific complaints or allegations of misconduct.

PEER first established the public need for regulation of these professions, then evaluated how well the board carries out its two primary regulatory functions to protect the public: licensing social workers and marriage and family therapists and handling complaints/investigations.

PEER also reviewed the board’s monitoring of licensees’ fulfillment of continuing education requirements and the board’s financial management practices.

Background

The Legislature created the Board of Examiners for Social Workers and Marriage and Family Therapists in 1997 to protect the public by licensing and regulating social workers and marriage and family therapists. The board licenses and regulates three levels of social workers (i. e., social workers, master social workers, and certified social workers), as well as marriage and family therapists. The typical regulatory functions of licensure and enforcement of applicable laws, rules, and regulations provide a safeguard against public risk. Without the safeguards of licensure and enforcement in place, the likelihood of untrained or unethical social workers and marriage and family therapists placing the public at risk could occur.

The board is composed of ten members--six social workers and four marriage and family therapists. The Governor appoints six members of the board (four social workers and two marriage and family therapists) and the Lieutenant Governor appoints four members (two social workers and two marriage and family therapists).

The board currently employs a full-time Executive Director and two full-time administrative assistants. The board contracts for investigations of complaints against practitioners and for temporary office staff during license renewal periods. Additionally, the board retains legal assistance from a representative of the Attorney General's office, who attends board meetings and assists with administrative hearings.

The board is a special fund agency, with revenues generated from fees charged for license application and renewal. FY 2006 revenues were \$196,482 and FY 2006 expenditures were \$211,831. (The board had a carryover cash balance from FY 2005; therefore, the board had no deficit in FY 2006.)

Conclusions

Overlap in the Scope of the Social Work and Marriage and Family Therapy Professions

The scopes of practice of social workers and marriage and family therapists are so broadly defined in state law that they often overlap with each other and, in some cases, may conflict with state law regarding the practice of other professions (e. g., the practice of psychology).

The statutory definitions of scopes of practice for social workers and marriage and family therapists (in MISS. CODE ANN. Section 73-53-3 and Section 73-54-5 [1972]) are sufficiently broad to encompass the scopes of practice of other social service professions. The types of services social workers and marriage and family therapists may provide in Mississippi overlap in some areas (e.g., treatment/counseling) and are imprecisely defined in state law. The statutory definitions and rules of the board regarding scopes of practice of these two professions may even contradict other provisions of state law. For example, the board's rules and regulations allow a licensed certified social worker to use "interventive methodologies such as psychotherapy and a variety of psychotherapeutic techniques" and the definition of *marriage and family therapy* in MISS. CODE ANN. Section 73-54-5 (b) (1972) includes "the professional application of psychotherapeutic and family systems theories and techniques." Yet CODE Section 73-54-9 (3) expressly prohibits marriage and family therapists from engaging in

the practice of psychology. Because “psychotherapy” and “psychotherapeutic techniques” are arguably part of the practice of psychology, the statutes seem to contradict each other and the public could be confused about what type of practitioner to engage for treatment.

Potential for Compromised Independence of the Process for Nominating Board Members

State law requires the Governor and Lieutenant Governor to make appointments to the Board of Examiners for Social Workers and Marriage and Family Therapists from nominations provided by the statewide professional associations for social workers and marriage and family therapists. When the associations’ officers also serve as members of the board, the opportunity exists for the independence of the nominating process to be compromised.

When vacancies occur on the board, MISS. CODE ANN. Section 73-53-8 (1972) requires that the Mississippi Chapter of the National Association of Social Workers (NASW) and the Mississippi Association for Marriage and Family Therapy (MAMFT) provide nominations to the Governor and Lieutenant Governor.

Currently, three members of the board serve or have formerly served in leadership positions in their respective statewide associations. Even if none of these board members ever participated in the nomination process through their statewide professional associations, if no prohibition (i. e., in statute or in the board’s rules) exists against board members participating in the nominating process to fill board vacancies, in the future the potential exists for persons serving on the board to suggest nominations that would perpetuate their regulatory philosophies.

Needed Improvements in the Licensure Process

Applications for Licensure

Because state law does not specifically authorize the board to perform background checks on applicants for licensure, the board accepts applicants’ self-reporting of criminal history rather than initially utilizing background check resources available in the state. Also, although the law requires applicants for licensure in both professions to have “good moral character,” neither state law nor the board’s rules and regulations have formal, written criteria for this requirement.

The licensure prerequisites for social workers and marriage and family therapists, set in MISS. CODE ANN. Sections 73-53-13 and 73-54-13 (1972), do not include a requirement for the board to conduct background checks on licensure applicants, but do state that both social workers and marriage and family therapy applicants must

be “of good moral character.” Also, CODE Section 73-53-13 specifically requires that social workers must have an “absence of conviction of a felony related to the practice of social work for the last ten years.” In determining whether applicants have a criminal history that would preclude them from licensure, the board accepts applicants’ sworn self-reporting rather than initially utilizing background check resources. Relying on self-reporting of criminal history potentially allows applicants with serious criminal histories to be licensed. These licensees would be obvious threats to public safety.

Also, although state law requires applicants for licensure in both professions to have “good moral character,” neither state law nor the board’s rules and regulations have formal, written criteria for this requirement. Thus the potential exists for the board to judge applicants’ adherence to this requirement inconsistently or that an unsuitable applicant could inadvertently become licensed.

Experience Requirements for Licensure

The board’s requirements regarding evaluation of the supervised experience may not ensure that social worker and marriage and family therapist licensure applicants have acquired the experience needed for the practice of their professions.

Applicants for both social worker and marriage and family therapist licensure must fulfill requirements for supervised experience prior to licensure. State law sets the general supervised experience requirements for both professions and the board sets additional requirements.

The forms that the board requires supervisors to use in evaluating social worker and marriage and family therapist licensees have not been proven to contain the objective criteria necessary to demonstrate competence in supervised experience. Thus the board cannot ensure that these licensees have acquired the necessary experience required to practice their professions independently. Also, the board does not require supervisors to conduct practice evaluations (or other training) to assure inter-rater reliability¹ in evaluating applicants’ supervised experience prior to licensure. When inter-rater reliability among supervisor evaluations is not tested, the opportunity exists for supervisors to evaluate supervisees in an inconsistent manner, which could result in arbitrary and capricious treatment of potential licensees.

¹ *Inter-rater reliability* is the extent to which two or more individuals (i. e., coders or raters) agree. Inter-rater reliability addresses the consistency of the implementation of a rating system.

Maintaining Licensure Information

The board does not maintain an accurate database of licensee information, which could allow individuals without a current license to continue to practice and put the public at risk.

PEER found inaccuracies in the licensee database of the Board of Examiners for Social Workers and Marriage and Family Therapists. The status of selected licensees shown in the database did not accurately reflect their actual status (e. g., some records showed licenses as “active” when they were not).

Poor records management of a regulatory board hinders the board’s ability to perform its regulatory function to protect the public from unlicensed, insufficiently trained and unethical social workers and marriage and family therapists.

Issues Regarding Continuing Education of Licensees

Continuing Education for Social Workers

Because state law does not require social workers to complete continuing education in order to renew their licenses, the board cannot enforce its rules requiring such and cannot ensure that social workers stay abreast of the most recent research and techniques of their profession.

Neither MISS. CODE ANN. §73-53-15 (1972), which governs license renewal for social workers, nor any other CODE section requires social workers to participate in continuing education activities. However, *Rules and Regulations Regarding Social Workers and Marriage and Family Therapists* requires social workers to complete four social work units (i. e., forty hours of continuing education) for each renewal period. When licensees do not submit the required number of continuing education hours, the rules and regulations call for disciplinary actions to be taken against licensees. However, because the requirements are not in law, the board cannot legally enforce them.

Continuing Education for Marriage and Family Therapists

Rather than verifying continuing education annually for all licensed marriage and family therapists, the board's policy is that it *may* randomly audit a percentage of licensees' continuing education hours. The board is not consistently conducting these random audits, and when it does, it conducts them after licenses have been renewed. Thus the board does not ensure that all licensed marriage and family therapists receive the necessary continuing education to remain professionally competent prior to having their licenses renewed.

MISS. CODE ANN. Section 73-54-27 (5) (1972) requires that marriage and family therapists participate in continuing education "in order to renew a license." The implementation of the statutory requirement is the responsibility of the board. The board requires that marriage and family therapists complete thirty-five hours of continuing education every two years, four hours of which must be in professional ethics. However, the board does not require proof/documentation of completed continuing education hours prior to renewal of a license. The board's policy that it may randomly audit a percentage of licensees' continuing education (which, in practice, is done for a small percentage of licenses after renewal) does not ensure that all marriage and family therapists have completed the number of continuing education hours required by the board so that they may stay abreast of professional developments in their field.

Inadequacies in Complaints and Disciplinary Processes

Deficiencies in Management of Complaints Process

The Board of Examiners for Social Workers and Marriage and Family Therapists does not have an effective system for managing complaints filed against social workers and marriage and family therapists. The board does not maintain a master record or log of complaints containing all legally required information, as well as the current status of the complaints. Minutes do not contain a complete record of the board's actions taken on complaints. Individual complaint files do not consistently contain complete documentation, including a record of actions taken on that individual complaint, copies of letters that should have been sent to complainants and licensees according to the board's rules and regulations, or an explanation of the reasons for actions taken. Also, the board does not establish a timeline or milestones for resolution of complaints.

The board's complaint log does not contain the case description and status/disposition of a complaint, even though MISS. CODE ANN. Section 73-53-19 (1972) and the board's own rules and regulations require that this information be logged. Because the board does not maintain a complete complaint log, it is unable to monitor effectively the status of complaints.

Concerning the board's final action on complaints, MISS. CODE ANN. Section 25-41-11 (1972) requires that all public bodies keep minutes and that these minutes reflect the final actions taken by these bodies. PEER reviewed board minutes for the period August 4, 1997, to April 2007 to determine the official disposition of the seventy-two official complaints submitted to the board from its inception through April 2007. There was no information in the board minutes concerning the status of twenty-eight of the seventy-two complaints.

PEER also found that the board does not ensure that all complaint files contain documentation of the history and disposition of each individual complaint. Because the board does not consistently maintain a record of actions taken on complaints, including a brief explanation of the reasons for the action taken, in the complaint files and does not establish a timeline or milestones for resolution of complaints, PEER could not evaluate the timeliness of the board's complaints process. However, from the records that the board maintains, PEER concluded that nineteen complaint cases are over five years old, which calls into question the board's management of its complaints process.

Publication of Licensee and Disciplinary Action Information

The board has not complied with state law requiring annual publication of names of social worker licensees and those licensees who had license revocations or suspensions within the preceding year.

MISS. CODE ANN. § 73-53-27 (5) (1972) requires that the board annually publish the names of all social worker licensees and those who have had license revocations or suspensions that year. The law does not specifically require the board to publish this information on marriage and family therapists. Although the board reports disciplinary sanctions regarding social worker licensees to the Association of Social Work Boards (ASWB) and that body subsequently reports such to the National Practitioners Database, the general public does not have access to these databases. Without such information, a person unknowingly could obtain services from licensed professionals who have had sanctions against them, thereby placing themselves at an increased risk of harm.

Rules and Regulations Governing Standards of Conduct

Although the board has created a unified set of rules and regulations governing standards of conduct for both social workers and marriage and family therapists, several of these standards are unenforceable due to lack of statutory authority and vagueness.

PEER extends a strict construction to the provisions of law dealing with the regulation of both social workers and family and marriage therapists. Courts in Mississippi have consistently held that statutes regulating professionals are penal in nature and should be construed strictly against the state. Although it is reasonable for a unified board to attempt to consolidate the rules and regulations governing the profession's standards of conduct, current law does not fully support the board in these efforts.

The standards of conduct that have been adopted by the board requiring reporting of violations by a licensee lack statutory authority. The board's rules and regulations contain violations that are not found in either the statute for social workers or the statute for marriage and family therapists. While the enforceability of these standards has not been challenged to date, a court could find that the board lacks authority to enforce these additional standards of conduct against either social workers or marriage and family therapists. The board has adopted one standard of conduct that, while enforceable against marriage and family therapists through incorporation of their national association's code of ethics, is not enforceable against social workers. The law has not been amended to include this specific standard of conduct and therefore social workers should not be disciplined for failure to comply with this standard. Also, by adopting the code of ethics for the National Association of Social Workers, the board has implemented standards of conduct that are vague and unenforceable because they cannot be easily defined in court or by a social worker in the course of practice.

Problems with Financial Management

The board has not implemented internal controls recommended by the State Auditor to improve cash receipts accounting, controls over the bank clearing account, and timely deposits of cash receipts into the bank clearing account and State Treasury.

To ensure fiscal accountability within smaller agencies of state government, the State Auditor performs limited internal control and compliance reviews. The reviews evaluate an agency's compliance with state laws, its own

internal controls, state policies and procedures, and its own policies and procedures. Following completion of the fieldwork, the State Auditor issues a management report to the agency's management containing findings of deficiencies or noncompliance, if any, and recommendations for improving the agency's internal controls.

The State Auditor completed a limited internal control and compliance review of the Board of Examiners for Social Workers and Marriage and Family Therapists in 2003, reporting the results on May 15, 2003. In his June 6, 2003, written response to the State Auditor, the board's Executive Director described actions that the board's staff would take to implement the State Auditor's recommendations and improve the board's internal control environment. Although the board and staff have taken steps to improve some of the internal control deficiencies identified by the State Auditor, the board has not fully implemented all of the actions contained in its written response to the State Auditor, as described below:

- *Cash receipts accounting*--Although the board has created a system of checks and balances for its cash receipts process, no board member conducts a monthly review of the cash receipts process as the board had agreed to do in its response to the State Auditor. Also, the board's procedures for receiving and recording cash receipts could result in misappropriation of funds.

In addition to weaknesses identified by the State Auditor, PEER identified another potential weakness in the board's internal controls relative to cash receipts. Having a single employee open mail, create a cash receipts log, and make a deposit slip increases the possibility of misappropriation for funds. Another potential flaw in the board's internal controls is the failure of the board's staff to reconcile cash received each day to a list of licensees due for renewal.

- *Controls over bank clearing account*--Although a degree of segregation of duties exists regarding the depositing of and accounting for cash receipts, the Executive Director is solely responsible for writing checks on the agency's bank clearing account and for reconciling the monthly bank statement, without oversight of other staff or board members.

- *Timely deposits of cash receipts into the State Treasury*--Contrary to MISS. CODE ANN. Section 7-9-21 (1972) and the Department of Finance and Administration's policy, the board does not always immediately deposit cash collections into its clearing account on a daily basis and then transfer daily collections in excess of \$1,000 from the clearing account to the State Treasury by the next business day.

Recommendations

1. Based on information gathered from this review of the Board of Examiners for Social Workers and Marriage and Family Therapists, PEER's recent review of the Board of Licensed Professional Counselors (#497; June 12, 2007), and other work in progress, the PEER Committee will report to the 2008 Legislature on issues related to overlapping scopes of practice for Mississippi's mental health professionals, as well as contradictions and imprecision in laws related to scope of practice.

The Committee will also recommend to the 2008 Legislature that it create a task force made up of members from the Board of Examiners for Social Workers and Marriage and Family Therapists, the Board of Licensed Professional Counselors, and the Board of Psychology to make recommendations no later than November 1, 2008, to the PEER Committee that would remedy these problems, including necessary statutory revisions to existing law. The PEER Committee will report the efforts of the task force to the 2009 Legislature no later than January 1, 2009.

2. The Legislature should amend MISS. CODE ANN. Section 73-53-8 (1972) to include a provision that no sitting member of the Board of Examiners for Social Workers and Marriage and Family Therapists may advise the Mississippi Chapter of the National Association of Social Workers (NASW) and the Mississippi Association of Marriage and Family Therapists (MAMFT) regarding board replacements. The board should also implement a rule mandating that if an individual is an officer of Mississippi Chapter of the NASW or MAMFT, as well as a sitting member of the Board of Examiners for Social

Workers and Marriage and Family Therapists, he or she should recuse himself/herself from the nominating process.

3. The Legislature should amend MISS. CODE ANN. Sections 73-53-13 and 73-54-13 (1972) to require the following:
 - that the board will conduct background checks on all applicants for licensure;
 - that the board may request the assistance of the Department of Public Safety, as well as consulting sex offender registries, in checking criminal histories of applicants.

The Legislature should also amend MISS. CODE ANN. Section 73-53-13 (d) (iv) (1972) to delete the wording “related to the practice of social work for the last ten years” in terms of felonies, since all felonies committed should prevent someone from being licensed.

In addition, the Legislature should amend MISS. CODE ANN. Section 73-54-13 (1972). For purposes of background checks and licensure, “good moral character” shall be established by an absence of felony convictions or convictions for misdemeanors involving moral turpitude.

4. The Legislature should amend MISS. CODE ANN. Section 73-54-17 (1972) to:
 - delete any reference to the American Association for Marriage and Family Therapy;
 - enable the board to require supervised experience for marriage and family therapist licensure in an amount not to exceed 200 hours. (The applicant may possess more than 200 hours of supervised experience, but the board shall not require more than that amount for licensure); and,
 - allow the applicant’s hours of supervised experience to have occurred either prior to or subsequent to the first qualifying degree, or a combination thereof.
5. The board should analyze the criteria used on the supervisor’s evaluation forms for social workers and marriage and family therapists to verify that it is, indeed, the adequate objective criteria appropriate to measure certified social worker and marriage and family therapist clinical practice.

The board should also require supervisors to conduct practice evaluations to assure inter-rater reliability in evaluating applicants' supervised experience prior to licensure.

6. The Legislature should amend MISS. CODE ANN. 73-53-15 (1972) to require social workers to complete continuing education in order to renew licenses.
7. To ensure licensees' compliance with provisions of MISS. CODE ANN. Section 73-54-27 (5) (1972) regarding completion of continuing education before license renewal for marriage and family therapists, the Board of Examiners for Social Workers and Marriage and Family Therapists should require that licensees submit documentation of completion of these requirements annually along with their renewal application and fee. Additionally, if the Legislature chooses to amend CODE Section 73-53-15 as recommended above, the Legislature should also amend Sections 73-54-27(5) and 73-53-15 to give the board the expressed authority to conduct audits of licensees' continuing education as it deems necessary.
8. To establish a process for managing complaints against licensees, the board should implement the following:
 - maintain a *complete* log of complaints, adding a brief description and the status/disposition of the complaint;
 - develop written guidelines for recordkeeping of complaint information, including defining responsibilities of board members in the complaints process;
 - include in its written contracts with investigators the requirements for completing work within specific timeframes and reporting on milestones within those timeframes.

The board's rules and regulations should provide guidelines for maintaining thorough documentation, including a written explanation of the rationale for the disposition of the complaint, and general timeframes for each phase of the complaints process. The board should make a written record of any justification for extending an investigation beyond the timeframes specified in the rules and regulations.

9. As required by MISS. CODE ANN. Section 25-41-11 (1972), the board should maintain an accurate and

complete record of all of its official actions in its minutes.

10. To comply with MISS. CODE ANN. §73-53-27 (5) (1972), the board should publish an annual list of the names and addresses of all social work licensees.

Also, the Legislature should amend state law to include the requirement of publishing an annual list of the names and addresses of all marriage and family therapist licensees as well.

11. The board should make information on final disciplinary orders and sanctions on both social workers and marriage and family therapists readily available to the public and licensees through the board's website. The board should maintain its website to reflect up-to-date information and increase its utility to the public.

The Legislature should amend state law to require publicizing the disciplinary orders and sanctions against marriage and family therapists.

12. The Legislature should expand the current chapter governing social workers to include the provisions contained in the Marriage and Family Therapy Licensure Act of 1997. In doing so, the Marriage and Family Therapy Licensure Act of 1997 should be repealed in its entirety. The authority to liberally construe the provisions in the marriage and family therapy statute should be repealed and not carried over to the combined chapter. Also, statutory authority should be given to the board to adopt the additional standards not found in either CODE section.

The board should determine which sections of the National Association of Social Workers' code of ethics are unambiguous and either change the wording of vague standards adopted by the board to make them enforceable or eliminate the use of such vague standards.

13. The Board of Examiners for Social Workers and Marriage and Family Therapists should follow through with the actions that it reported to the State Auditor in 2003 that it would take relative to the agency's financial management, including:
 - having a board member conduct a monthly review of the cash receipts process to verify that all receipts are properly accounted for and deposited into the bank;

- having a board member review the monthly bank statement reconciliations; and,
 - ensuring that board staff makes daily transfers of amounts in excess of \$1,000 from the bank clearing account to the State Treasury by the next business day.
14. The board should instruct the Executive Director to improve the agency's internal controls by:
- having two staff members open the mail together and record the cash receipts each day;
 - reconciling cash received each day to renewal notices previously mailed to licensees; and,
 - having an employee other than the Executive Director (who writes checks on the agency's bank clearing account) reconcile the monthly bank statements.

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A Review of the Board of Examiners for Social Workers and Marriage and Family Therapists

Introduction

Authority

The PEER Committee reviewed the Mississippi Board of Examiners for Social Workers and Marriage and Family Therapists (hereafter referred to as “the board”). PEER conducted the review pursuant to the authority granted by MISS. CODE ANN. Section 5-3-57 et seq. (1972). This review is a “cycle review,” which is not driven by specific complaints or allegations of misconduct.

Scope and Purpose

In conducting this review, PEER first determined whether regulation of the social work and marriage and family professions is necessary in order to reduce risks to the public. Once PEER established the public need for regulation of these professions, PEER then evaluated how well the board carries out its two primary regulatory functions to protect the public: licensing social workers and marriage and family therapists and handling complaints/investigations.

PEER also reviewed the board’s monitoring of licensees’ fulfillment of continuing education requirements and the board’s financial management practices.

Method

In conducting this review, PEER:

- reviewed relevant sections of state laws and the board's rules, regulations, policies, and procedures;
- interviewed the Executive Director, staff, board members, and personnel from relevant state and national professional associations; and,
- analyzed the board's records and financial information.

Background

Statutory Authority for Licensing and Regulation of Social Workers and Marriage and Family Therapists

Creation and Purpose of the Board

The Legislature created the Board of Examiners for Social Workers and Marriage and Family Therapists during the 1997 session to license and regulate social workers and marriage and family therapists. From 1987 until the creation of this board, the State Board of Health was the administrator of social work licenses and disciplinary actions for noncompliance with social work licensure requirements. According to the Executive Director of the Board of Examiners for Social Workers and Marriage and Family Therapists, there was no state regulation of marriage and family therapists prior to creation of the board.

Currently, the board regulates approximately 3,700 social workers and approximately 300 marriage and family therapists in Mississippi.

Statutory Authority for Licensing and Regulation of Social Workers

Regarding social workers, MISS. CODE ANN. Title 73, Chapter 53, governs licensing and regulation. MISS. CODE ANN. Section 73-53-5 (1972) lists those individuals declared to be outside the scope of licensure for social workers. That CODE section and the board's *Rules and Regulations Regarding the Licensure of Social Workers and Marriage and Family Therapists* state that the following individuals are outside the scope of licensure for social workers:

- individuals licensed or certified by the state in occupations whose activities overlap with the practice of social work (e. g., ministers), but who are not representing themselves as social workers;

- U. S. officers or U. S. agency employees performing official duties within the course of employment;
- individuals who perform similar services solely for the benefit of a family member without compensation; and,
- students performing activities in the course of obtaining social work degrees, if activities and services are being supervised by a licensed social worker.

According to CODE Section 73-53-7 (1972), individuals other than those described above who receive compensation for social work services and who are not licensed are guilty of a misdemeanor and upon conviction shall be fined not more than \$500 for the first offense and not more than \$1,000 for each subsequent offense. MISS. CODE ANN. Section 73-53-13 (1972) establishes the regulatory regimen for licensing social workers.

Statutory Authority for Licensing and Regulation of Marriage and Family Therapists

Regarding marriage and family therapists, MISS. CODE ANN. Title 73, Chapter 54, governs licensing and regulation. MISS. CODE ANN. Section 73-54-9 (1972) specifies those individuals who are exempt from the requirements of licensure as a marriage and family therapist:

- a marriage and family therapy intern or person preparing for the practice of marriage and family therapy under qualified supervision in a training institution or facility or supervisory arrangement; or,
- licensed or certified members of other professional groups as defined by their boards (e.g., clinical social workers, licensed professional counselors, or duly ordained ministers) who perform marriage and family therapy consistent with the standards of their professions.

MISS. CODE ANN. Section 73-54-7 (1972) prohibits any person not exempt from licensure who represents himself or herself as a “marital or marriage therapist,” “licensed marital or marriage and family therapist,” or any other name, style, or description denoting that a person is a marriage and family therapist or marriage and family counselor, to practice without having first complied with the provisions in the CODE regarding marriage and family

therapist licensure. Persons who do so shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than \$500 nor more than \$1,000 for each offense.

CODE Sections 73-54-13, 73-54-15, and 73-54-17 (1972) establish the regulatory regimen by which marriage and family therapists are licensed.

Statutory Provision for Penalties for Licensees' Violations

CODE Section 73-53-23 (1972) provides penalties for licensees' violations of laws, rules, and regulations governing the social work and marriage and family therapy professions. (CODE Section 73-54-35 incorporates this provision by reference to make it also applicable to marriage and family therapists.) This section authorizes the board to revoke a license, suspend a license, censure the licensee, issue a letter or reprimand to the licensee, impose a monetary penalty of not more than \$200, place a licensee on probation, refuse to renew a license, or revoke probation that has been granted, as well as other disciplinary actions.

Scope of Practice of the Social Work and Marriage and Family Therapy Professions

The scopes of practice for both social workers and marriage and family therapists in Mississippi are extremely broad, as evidenced by the following relevant excerpts from the MISSISSIPPI CODE.

Statutory Definitions Related to Social Work

MISS. CODE ANN. §73-53-3 (b) (1972) defines "social work practice" as:

. . .the professional activity directed at enhancing, protecting or restoring people's capacity for social functioning, whether impaired by physical, environmental or emotional factors.

CODE § 73-53-3 (c) (1972) defines "clinical social work practice" as:

. . .the application of social work methods and values in diagnosis and treatment directed at enhancing, protecting or restoring people's capacity for social

functioning, whether impaired by physical, environmental or emotional factors.

Statutory Definitions Related to Marriage and Family Therapy

MISS. CODE ANN. Section 73-54-5 (b) (1972) defines “marriage and family therapy” as:

. . .the rendering of professional therapy services to individuals, families or couples, singly or in groups, and involves the professional application of psychotherapeutic and family systems theories and techniques in the delivery of therapy services to those persons.

CODE §73-54-5 (c) (1972) defines the “practice of marriage and family therapy” as:

. . .the rendering of professional marriage and family therapy services to individuals, couples and families, singly or in groups, whether those services are offered directly to the general public or through organizations, either public or private, for a fee, monetary or otherwise.

Not only are these statutory definitions broad, in some instances they overlap and possibly conflict with the scopes of practice defined for other professions. (See PEER’s conclusion on scopes of practice of these professions on page 16.)

Licenses That the Board Issues

Issuance of Licenses to Social Workers

The Board of Examiners for Social Workers and Marriage and Family Therapists licenses and regulates three levels of social workers: social worker, master social worker, and certified social worker.

In addition to the qualifications for each of the three types of social worker licenses, MISS. CODE ANN. §§ 73-53-13 (d) (i) through (d) (vi) (1972) state that applicants for social worker licenses must prove to the board’s satisfaction:

- age of at least twenty-one;
- good moral character, which is a continuing requirement for licensure;
- United States citizenship or status as a legal resident alien;
- absence of conviction of a felony related to the practice of social work for the last ten years (see page 22);
- that the applicant has not been declared mentally incompetent by any court, and if any such decree has ever been rendered, that the decree has since been changed; and,
- freedom from dependency on alcohol or drugs.

Social Worker License

According to MISS. CODE ANN. §73-53-13 (a) (1972), a social worker license will be issued to an applicant who meets the following qualifications:

- has a baccalaureate degree in social work from a college or university accredited by the Council on Social Work Education or Southern Association of Colleges and Schools and has satisfactorily completed an examination² for this license; or,
- has a comparable license or registration from another state or territory of the United States that imposes qualifications substantially similar to those of this chapter.

According to the board's rules and regulations, a licensed social worker:

- works under a supervisor (LMSW or other qualified professional);
- conducts basic problem solving;

² MISS. CODE ANN. § 73-53-3 (d) defines *examination(s)* as “that test or exam which is endorsed and prescribed by the [American] Association of Social Work Boards.” The *Rules and Regulations* also define “examination” as that test or other measurement that is endorsed and prescribed by the Association of Social Work Boards (ASWB).

- conducts data gathering;
- performs assessment;
- conducts planning and contracting;
- uses various generalist interventive methodologies; and,
- evaluates own practice.

Master Social Worker License

MISS. CODE ANN. §73-53-13 (b) (1972) states that a master social worker license will be issued to an applicant who meets the following qualifications:

- has a doctorate or master's degree from a school of social work accredited by the Council on Social Work Education; and,
- has satisfactorily completed an examination for this license; **or**
- has a comparable license or registration from another state or territory of the United States that imposes qualifications substantially similar to those of this chapter.

According to the board's rules and regulations, a licensed master social worker:

- works under a supervisor (e.g., an experienced LMSW, LCSW, psychiatrist, Ph.D. clinical psychologist); and,
- uses assessment and treatment of a psychosocial nature (e.g., personality adjustment, behavior problems, interpersonal functioning).

Certified Social Worker License

MISS. CODE ANN. §73-53-13 (c) (1972) says a license as a certified social worker will be issued to an applicant who meets the following qualifications:

- is licensed as a master social worker; and,

- has twenty-four months of experience acceptable to the board, under appropriate supervision; and,
- has satisfactorily completed a state examination for this license; **or**
- has a comparable license or registration from another state or territory of the United States that imposes qualifications substantially similar to those of this chapter.

According to the board's rules and regulations, a licensed certified social worker:

- works independently;
- uses interventive methodologies such as psychotherapy and a variety of psychotherapeutic techniques; and,
- may supervise and manage.

MISS. CODE ANN. § 73-53-13 (e) (1972) indicates that only individuals licensed as "certified social workers" are permitted to call themselves "clinical social workers."

Issuance of Licenses to Marriage and Family Therapists

The Board of Examiners for Social Workers and Marriage and Family Therapists also licenses marriage and family therapists. Qualifications for licensure in MISS. CODE ANN. § 73-54-17 (1972) require that the individual:

- holds a master's degree or doctoral degree in marriage and family therapy from an institution of higher education in a program that is accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE), or that was in COAMFTE candidacy status at the time of graduation and subsequently received COAMFTE accreditation;
- following the receipt of the first qualifying degree, has at least two years of supervised experience in marriage and family therapy, or its equivalent, acceptable to the board, provided it meets, at a minimum, the requirements for clinical membership in the American Association for Marriage and Family Therapy;

- has completed at least one hundred hours of supervision of marriage and family therapy, as defined by the board; and,
- passes an examination³ administered by the board.

MISS. CODE ANN. § 73-54-13 (1972) states that a person desiring to obtain a license as a practicing marriage and family therapist must also meet the following qualifications:

- is of good moral character;
- has not engaged or is not engaged in any practice or conduct which would be ground for refusing to issue a license (under the law's grounds for disciplinary actions);
- is qualified for licensure pursuant to the requirements of the chapter; and,
- is at least twenty-one.

Licenses Issued by “Grandfathering” and Reciprocity

“Grandfathering” Provisions

For social workers, Chapter 421, *Laws of 1987*, allowed individuals to become licensed social workers if they were engaged in the practice of social work on July 1, 1987. If individuals were practicing on that date and met the appropriate education and/or experience requirements and paid the appropriate fee, they could be licensed as a master’s or certified social worker. MISS. CODE ANN. § 73-53-7 (1972) makes other “grandfathering” provisions for persons practicing as social workers for public employers but who were not licensed on July 1, 1993.

For marriage and family therapists, MISS. CODE ANN. Section 73-54-15 (1972) allowed persons who applied for licensure on or before September 1, 2000, to be issued a license if he/she met the qualifications set forth in §73-54-13 (e.g., good moral character, at least 21), paid the required application fees, and provided evidence to the board that he/she met educational experience qualifications.

³MISS. CODE ANN. § 73-54-19 (2) states that an applicant is required to pass the Examination of Marriage and Family Therapy written for the marriage and family regulatory boards. According to the board’s *Rules and Regulations Specific to Marriage and Family Therapists*, the examination for licensing marriage and family therapists will be the American Association of Marital and Family Therapy Regulatory Boards (AAMFTRB) Examination in Marital and Family Therapy.

Reciprocity Provisions

For social workers, MISS. CODE ANN. Section 73-53-13 (c) (iv) (1972) states that persons who have a comparable license or registration from another state or territory of the United States that imposes qualifications substantially similar to those of the chapter may also be licensed as a certified social worker. The board also requires that social workers pass the same examination endorsed or prescribed by the Association of Social Work Boards.

For marriage and family therapists, MISS. CODE ANN. §73-54-23 (1972) states that the board will license any applicant licensed or certified as a marriage and family therapist in another state that has met requirements that the board believes demonstrate that the applicant is competent to engage in the practice of marriage and family therapy in this state. In addition, he/she must submit an application on forms prescribed by the board and pay the original licensure fee.

Risks to the Public and Need for Regulation

The Board of Examiners for Social Workers and Marriage and Family Therapists' website states that its purpose is:

. . .to ensure that the public is protected from the unprofessional, improper, unauthorized and unqualified practice of social work and marriage and family therapy.

The board is a member of the Association of Social Work Boards (ASWB). According to the ASWB, all fifty states, as well as ten Canadian provinces, the District of Columbia, the U. S. Virgin Islands, and Puerto Rico regulate the social work profession. The mission of the ASWB is:

. . .to assist social work regulatory bodies in carrying out their legislated mandates and to encourage jurisdictional efforts to protect a diverse public served by social workers who are regulated. . .The Association will help to foster public and professional understanding of the value, competency, and accountability of regulated social workers.

According to the American Association for Marriage and Family Therapy, forty-eight states currently regulate the marriage and family therapy profession through licensure or certification. The association suggests that the

regulation of marriage and family therapy aims to honor public trust and provide protection against grave circumstances that could arise resulting from a lack of professional competence, impaired integrity, or unethical and inappropriate behavior.

The typical regulatory functions of licensure and enforcement of applicable laws, rules, and regulations provide a safeguard against public risk. Without the safeguards of licensure and enforcement in place, untrained or unethical social workers and marriage and family therapists could place the public at risk.

The lack of regulation would lead to an environment in which the buyer must beware. The effects of a person receiving service and/or treatment from untrained, unqualified persons would offer the chance for much greater trauma and might be considerably difficult to reverse. Further, licensure ensures accountability for clients who believe they are victims of fraudulent, unethical, or negligent practice.

Risks to the public from the unregulated practice of social work and marriage and family therapy fall within three categories: (1) incompetent practice, (2) unethical practice, and (3) illegal practice. An example of incompetent practice would be an inaccurate diagnosis and corresponding treatment plans resulting from practicing outside of one's scope of competence or lack of knowledge or clinical experience. Examples of unethical practice include forming inappropriate dual relationships with clients or breaching clients' confidentiality. Illegal practice includes the practice of social work and marriage and family therapy for a fee without a current license, as well as fraud (e.g., charging for services that were never performed).

Board Composition and Staff

Composition of the Board

As presently constituted under MISS. CODE ANN. Section 73-53-8 (1972), the board is composed of ten members--six social workers and four marriage and family therapists. Of the social worker members of the board, two must be licensed social workers, four must be licensed master social workers or licensed certified social workers or a combination thereof. The marriage and family therapist members must be licensed marriage and family therapists. For at least five years immediately preceding his/her appointment, each marriage and family therapist appointee must have been actively engaged as a marriage

and family therapist in rendering professional services in marriage and family therapy, or in the education and training of master's, doctoral or post-doctoral students of marriage and family therapy, or in marriage and family therapy research, and during the two years preceding his or her appointment, must have spent the majority of the time devoted to that activity in the state.

The Governor appoints six members of the board--four social workers and two marriage and family therapists. The Lieutenant Governor appoints four members--two social workers and two marriage and family therapists. Social worker members shall be appointed from nominations submitted by the Mississippi Chapter of the National Association of Social Workers and the marriage and family therapist members shall be appointed from nominations submitted by the Mississippi Marriage and Family Therapy Association (now called the Mississippi Association for Marriage and Family Therapy).

All members serve four-year terms. Upon the expiration of terms, board members serve until his or her successor has been appointed and qualified. No person may be appointed more than once to fill an unexpired term or more than two consecutive full terms.

The Board's Staff

The law states that the board is authorized to employ an executive director and other necessary staff. The board currently employs a full-time Executive Director and two full-time administrative assistants. Additionally, the board retains legal assistance from a representative of the Attorney General's office, who attends board meetings and assists with administrative hearings.

The Executive Director is responsible for managing the office of the board to include such duties as taking calls regarding licensure and complaints, receiving and reviewing applications for licensure for completeness, processing license renewals, maintaining the board's files and records (including its database), conducting board communications, and receiving and depositing fees into the State Treasury. The two administrative assistants assist the Executive Director with his duties. The board contracts with investigators, who are usually licensed social workers or marriage and family therapists who have investigative experience, for periods of three to six months to investigate complaints against practitioners. The board also contracts with temporary office staff during renewal periods.

Revenues and Expenditures

The Board of Examiners for Social Workers and Marriage and Family Therapists is a special fund agency, with revenues generated from fees charged for license application and renewal. See Exhibit 1, page 15, for a list of the board's fees. As illustrated in Exhibit 2, page 15, the board's revenues have exceeded expenditures for four of the past five fiscal years. Since the board is a special fund agency, its cash balances in the State Treasury do not lapse or transfer to the General Fund at the end of each fiscal year. As a result, the board has accumulated the following ending cash balances over the past five fiscal years that it used, along with each year's revenues, to fund its operations:

FY 2002:	\$276,085
FY 2003:	\$287,609
FY 2004:	\$306,133
FY 2005:	\$329,065
FY 2006:	\$317,497

During each board meeting, the Executive Director provides the board with a report of the agency's revenues and monthly expenditures, by detail for each major category of expenditure--i. e., personal services and travel, contractual services, commodities, and capital outlay-equipment. In addition, the Executive Director provides information regarding cumulative expenditures for the fiscal year in comparison to the board's available spending authority contained in the agency's appropriation bill.

Exhibit 1: Board of Examiners for Social Workers and Marriage and Family Therapists, Fee Schedule

Social Workers and Applicants	Fee
Initial Licensure Fee, Licensed Social Worker (LSW)	\$ 70 (for two years)
Initial Licensure Fee, Licensed Master Social Worker (LMSW) and Licensed Certified Social Worker (LCSW)	\$100 (for two years)
Upgrade from Licensed Social Worker to Licensed Master Social Worker	\$30
Renewal Fee: Licensed Social Worker	\$70
Renewal Fee: Licensed Master Social Worker	\$100
Renewal Fee: Licensed Certified Social Worker	\$100
Marriage and Family Therapists and Applicants	Fee
Application for Licensure Fee, non-refundable	\$100
Initial Licensure Fee	\$200 (for two years)
Renewal Licensure Fee	\$200 (for two years)
In addition to the fees listed above, the board has various administrative and processing fees, such as duplicate license fees, replacement of license fees, address labels, address lists, etc.	

SOURCE: Staff of the Board of Examiners of Social Workers and Marriage and Family Therapists.

Exhibit 2: Board of Examiners for Social Workers and Marriage and Family Therapists, Revenues and Expenses, FY 2002-FY 2006

	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
<i>Revenues</i>					
License Fees/Other	\$180,904	\$195,538	\$196,990	\$199,212	\$196,482
<i>Expenditures:</i>					
Salaries, Wages, Fringes	\$103,286	\$99,849	\$98,066	\$115,935	\$124,250
Travel	9,172	8,853	7,493	7,950	5,393
Contractual Services	44,394	57,094	52,964	50,532	73,014
Commodities	8,822	13,717	7,426	9,900	4,964
Capital Outlay: Equipment	4,183	12,238	0	2,515	4,210
Total Expenditures	\$169,857	\$191,751	\$165,949	\$186,832	\$211,831
<i>Revenues less Expenditures</i>	\$11,047	\$3,787	\$31,041	\$12,380	-\$15,349

SOURCE: Staff of the Board of Examiners of Social Workers and Marriage and Family Therapists and Statewide Automated Accounting System records.

The board had a carryover cash balance from FY 2005; therefore, the board had no deficit in FY 2006.

Conclusions

Overlap in the Scope of the Social Work and Marriage and Family Therapy Professions

The scopes of practice of social workers and marriage and family therapists are so broadly defined in state law that they often overlap with each other and, in some cases, may conflict with state law regarding the practice of other professions (e.g., the practice of psychology).

Scope of Practice of Social Workers

MISS. CODE ANN. Section 73-53-3 (1972) defines “social work practice” and “clinical social work practice” (see page 5). These definitions are sufficiently broad to encompass the scopes of practice of other social service professions, including marriage and family therapists.

In addition to overlap in statutory definitions of the scopes of practice of these two professions, the board’s scope limitation statement for social workers provides for multiple interpretations.

Social workers work in a variety of settings (e.g., human/social services, nursing homes, mental health centers, hospitals, schools, business and industry) and areas (e.g., social problems/policy, counseling, drug treatment/addiction). Mississippi’s Board of Examiners for Social Workers and Marriage and Family Therapists licenses and regulates three levels of social workers. (See page 6 for the characteristics of each type of social worker licensed in Mississippi.)

Although the board’s *Rules and Regulations Regarding the Licensure of Social Workers and Marriage and Family Therapists* attempts to limit the scope of practice of social workers in Mississippi, the scope limitation statement also provides for multiple interpretations of a social worker’s scope of practice:

It is the legal and ethical responsibility of each licensed social worker to limit the scope of professional practice to the parameters of the licensee’s competencies. Client systems for all levels of licensure may be individuals, groups, families, organizations, and communities.

Scope of Practice of Marriage and Family Therapists

MISS. CODE ANN. Section 73-54-5 (1972) defines “marriage and family therapy” and the “practice of marriage and family therapy” (see page 6). Again, as with the statutory

definitions of social work practice, these definitions are sufficiently broad to encompass the scopes of practice of other social service professions.

According to the board's *Rules and Regulations Regarding the Licensure of Social Workers and Marriage and Family Therapists* and the American Association of Marriage and Family Therapy, marriage and family therapists:

- can practice independently;
- attempt to resolve interpersonal conflicts and change perception, attitudes, and behaviors through individual, group, couple, sexual, family and divorce therapy/counseling using psychotherapy in the context of marital and family systems; and,
- use assessment instruments and applied understanding of dynamics of marriage and family systems to diagnose, identify, evaluate and treat emotional, cognitive, affective, behavioral or psychological problems and conditions. Some disorders include: drug abuse, depression, alcoholism, obesity, dementia, schizophrenia, affective (mood) disorders, children's conduct disorders, anorexia, childhood autism, and chronic physical illness.

Potential for Confusion over Overlapping, Imprecisely Defined, and Contradictory Scopes of Practice

As evidenced above, the types of services social workers and marriage and family therapists may provide in Mississippi overlap in some areas (e.g., treatment/counseling) and are imprecisely defined in state law. Also, the statutory definitions and rules of the board regarding scopes of practice of these two professions may even contradict other provisions of state law.

For example, the board's rules and regulations allow a licensed certified social worker to use "interventive methodologies such as psychotherapy and a variety of psychotherapeutic techniques." In its definition of marriage and family therapy, MISS. CODE ANN. Section 73-54-5 (b) (1972) includes "the professional application of psychotherapeutic and family systems theories and techniques." The board's rules allow marriage and family therapists to diagnose, identify, evaluate, and treat psychological problems and conditions. According to the AAMFT, those include conditions such as depression, anorexia, and schizophrenia. Arguably, "psychotherapy" and "psychotherapeutic techniques" and the diagnosis,

identification, evaluation, and treatment of psychological problems and conditions are part of the practice of psychology. Yet CODE Section 73-54-9 (3) states:

Nothing in this chapter [Marriage and Family Therapy Licensure Act of 1997] shall be construed as permitting licensed marriage and family therapists to engage in the practice of psychology.

Further complicating the issue, the Board of Examiners for Social Workers and Marriage and Family Therapists' *Rules and Regulations Regarding the Licensure of Social Workers and Marriage and Family Therapists* states:

. . .the license to practice social work or marriage and family therapy does not permit the licensee to either offer or attempt to provide services which are beyond the level of competency they have attained through education, training, supervision or clinical experience, even though the service in question may be provided routinely by other licensed social workers and marriage and family therapists.

“Psychotherapy” and “psychotherapeutic techniques” are specifically mentioned as being within the scopes of practice of both social workers (in regulations) and of marriage and family therapists (in state law).

Because services such as “psychotherapy” and “psychotherapeutic techniques” are specifically mentioned as part of the scopes of practice of social workers (in the board’s rules and regulations) and of marriage and family therapists (in state law), the public not only could be confused about what type of practitioner to engage for treatment, it is possible that unqualified social workers or marriage and family therapists could be using methodologies they have not been trained to use.

Potential for Compromised Independence of the Process for Nominating Board Members

State law requires the Governor and Lieutenant Governor to make appointments to the Board of Examiners for Social Workers and Marriage and Family Therapists from nominations provided by the statewide professional associations for social workers and marriage and family therapists. When the associations’ officers also serve as members of the board, the opportunity exists for the independence of the nominating process to be compromised.

Statutory Requirements for Filling Board Vacancies

According to MISS. CODE ANN. Section 73-53-8 (1972), the Mississippi Chapter of the National Association of Social Workers (NASW) and the Mississippi Association for

Marriage and Family Therapy (MAMFT) are responsible for providing nominations to the Governor and Lieutenant Governor from which they fill vacancies on the Board of Examiners for Social Workers and Marriage and Family Therapists. The Mississippi associations are branches of the National Association of Social Workers and the American Association for Marriage and Family Therapy and are governed by officers chosen by the members of the statewide associations.

Neither the board's enabling legislation nor its rules reduce the opportunity for the influence of board members on the bodies that make nominations to fill board vacancies.

Because neither the board's enabling legislation nor its rules reduce the opportunity for such, the influence of board members on the bodies that make nominations to the Governor and Lieutenant Governor to fill board vacancies could compromise the independence of the nominating process for filling vacancies on the board.

The Nomination Process for Social Worker Positions on the Board

As described on page 12, MISS. CODE ANN. Section 73-53-8 (1972) requires that the Board of Examiners for Social Workers and Marriage and Family Therapists be composed of ten members, six of which shall be social workers.

According to the Executive Director of the Mississippi Chapter of the National Association of Social Workers, when the board has a vacant social worker position, the Mississippi Chapter of the NASW publicizes the vacancy through various methods (e. g., its website), then accepts applications and resumés from all qualified licensed social workers, not just members of the Mississippi Chapter of the NASW. The Executive Committee of the Mississippi Chapter of the NASW then chooses what it considers to be the top three candidates to submit as nominations to the Governor and Lieutenant Governor for the vacancy on the board. Considerations in choosing nominees from the applications submitted include type of license (i.e., LSW, LMSW, and LCSW) and experience and concerns regarding diverse representation on the board.

The Nomination Process for Marriage and Family Therapist Positions on the Board

As described on page 12, MISS. CODE ANN. Section 73-53-8 (1972) requires that the Board of Examiners for Social Workers and Marriage and Family Therapists be composed of ten members, four of which shall be marriage and family therapists.

The Mississippi Association of Marriage and Family Therapy (MAMFT) President reported that there is no formal process for nominating marriage and family therapists to serve on the board. The association does not take applications or post notices on the MAMFT website when positions become available. The MAMFT Executive Committee recommends people who meet the qualifications in law, considering location of the individual's residence/practice, experience, and the number of years of residence in Mississippi. The MAMFT contacts those individuals deemed most appropriate to fill the vacancy to inquire of their willingness to serve. The MAMFT President then submits nominations to the Governor and Lieutenant Governor.

How Independence of the Process Could Be Compromised

Currently, three members of the Board of Examiners for Social Workers and Marriage and Family Therapists serve or have formerly served in leadership positions in their respective statewide associations.

No provision in state law or in the board's rules and regulations prohibits a board member from serving simultaneously as an officer of the Mississippi Chapter of the NASW or the MAMFT, nor is there a prohibition against board members making recommendations for nominations for board replacements. Currently, three members of the Board of Examiners for Social Workers and Marriage and Family Therapists serve or have formerly served in the following leadership positions in their respective statewide associations:

- One social worker member of the board also serves as a member of the Executive Committee of the Mississippi Chapter of the NASW. However, she was not serving on both the board and the Executive Committee the last time nominations for a board position were made.
- One social worker member of the board is a former member of the Executive Committee and was serving on that committee at the time of the last nominations for a board position. However, he reports that he voluntarily recused himself from the nomination process. One marriage and family therapist member of the board who is currently serving as the board's Chair is also a committee chair for MAMFT. However, he reported that he is not a member of the Executive Committee that chooses nominees, nor has he ever served on the Executive Committee.

Even if none of these board members ever participated in the nomination process through their statewide professional associations, if no prohibition (i.e., in statute or in the board's rules) exists against board members

participating in the nominating process to fill board vacancies, in the future the potential exists for persons serving on the board to suggest nominations that would perpetuate their regulatory philosophies.

The bodies that make nominations to the Governor and Lieutenant Governor for their use in filling board vacancies should be at liberty to make their own choices and have the opportunity to include in their nominations individuals with a diversity of backgrounds and regulatory philosophies.

Needed Improvements in the Licensure Process

Applications for Licensure

Because state law does not specifically authorize the board to perform background checks on applicants for licensure, the board accepts applicants' self-reporting of criminal history rather than initially utilizing background check resources available in the state. Also, although the law requires applicants for licensure in both professions to have "good moral character," neither state law nor the board's rules and regulations have formal, written criteria for this requirement.

Statutory Requirements Regarding Licensees' Personal History

The licensure prerequisites for social workers and marriage and family therapists, set in MISS. CODE ANN. Sections 73-53-13 and 73-54-13 (1972), do not include a requirement for the board to conduct background checks on licensure applicants, but do state that both social workers and marriage and family therapy applicants must be "of good moral character." Also, CODE Section 73-53-13 (1972) specifically requires that social workers must have an "absence of conviction of a felony related to the practice of social work for the last ten years."

The board accepts applicants' sworn self-reporting of criminal history rather than initially utilizing background check resources. As a result, the board may not be able to protect the public from applicants who do not disclose criminal histories and yet obtain licenses.

Application Questions Regarding Personal History

In determining whether applicants have a criminal history that would preclude them from licensure, the board relies on self-reporting on the application forms, as described below:

- The licensure application form for social workers requires that applicants answer thirteen questions

regarding personal and licensure history, nine of which are “yes” or “no” questions. The question regarding felony convictions, which does not restrict felonies to the practice of social work (see discussion in following section), is: “Have you ever been convicted of any crime or violation of law (except minor traffic violations)?”

- The licensure application form for marriage and family therapists asks applicants to report personal and licensure history by answering eighteen questions, twelve of which are “yes “ or “no” questions. The question regarding criminal history is: “Have you ever been arrested, charged, sentenced, or received a deferred judgment for the commission of a felony, or any crime involving moral turpitude in the United States or a foreign country?”

Both forms require the applicant to swear that the information presented is true “to the best of my knowledge and belief” and require notarization of that statement.

Need for Additional Assurance of Licensees’ Suitable Background

Self-reporting of criminal history is not appropriate due to the seriousness of such information and a higher potential for misreporting.

Since negative information could lead to a denial of licensure for a social worker or marriage and family therapist, it seems apparent that those with criminal backgrounds would not voluntarily provide this information, even under the threat of committing perjury in a sworn statement. Self-reporting of information might be appropriate in certain situations; however, self-reporting of criminal history is not appropriate due to the seriousness of this information and a higher potential for misreporting.

Due to the nature of the social work and marriage and family therapy professions, the use of criminal background checks and offender registry checks would be justified. According to the Commerce Clearing House, a noted publisher of news and information for business and legal professionals, jobs that are likely to require a criminal background search are ones that have a high degree of public contact, have little supervision, involve working in private residences or other businesses, involve personal care of others, or have direct access to others’ personal belongings. Both the social worker and marriage and family therapist professions have many of these attributes.

The board’s Executive Director acknowledged that the board does not presently have explicit statutory authority

to conduct background checks and that he would need legal advice on how to implement such a procedure.

Mississippi has resources available for conducting background checks on applicants. The free internet-based Mississippi Sex Offender Registry, maintained by the Department of Public Safety, could be used to screen out applicants who have been convicted of certain sexual offenses. The website states “This information is made available for the purpose of protecting the public.” Further, the state’s criminal records repository, Mississippi Department of Public Safety’s Criminal Information Center (CIC), provides fingerprint background checks to such state agencies as the Department of Health and the Department of Mental Health and could possibly be used by the Board of Examiners for Social Workers and Marriage and Family Therapists as well.

Relying on self-reporting of criminal history potentially allows unethical applicants with serious criminal histories to be licensed. These licensees would be obvious threats to public safety, particularly to the social work and marriage and family therapy professions, as they could take advantage of a vulnerable population.

Although state law requires applicants for licensure in both professions to have “good moral character,” neither state law nor the board’s rules and regulations have formal, written criteria for this requirement. Thus the potential exists for the board to judge applicants’ adherence to this requirement inconsistently or that an unsuitable applicant could become licensed.

Because many of the questions on the board’s application regarding personal history would not elicit sufficient information with which to make a judgment on “good moral character,” the potential exists for an applicant with an unsuitable background to progress through the licensure process undetected.

As stated previously, the licensure prerequisites for social workers and marriage and family therapists, set in MISS. CODE ANN. Sections 73-53-13 and 73-54-13 (1972), state that both social workers and marriage and family therapy applicants must be “of good moral character.” However, neither of these CODE sections sets forth criteria for “moral character” as a basis for acceptance or rejection of a licensure applicant. The *Rules and Regulations Regarding the Licensure of Social Workers and Marriage and Family Therapists* also does not set forth criteria for how an applicant’s “moral character” is to be judged. As noted previously, the board relies on the applicant’s self-reporting of personal or criminal history in response to questions on the application forms (see preceding section) as a reflection of the applicant’s character.

Because the board has no formal, written criteria for accepting or rejecting applicants on the basis of criminal history, the board has not taken a formal stand on how it will interpret “good moral character” consistently for all licensure applicants. Thus the potential exists that the

board could treat applicants unfairly, accepting existence of certain criminal charges for some individuals and not accepting them for others. Also, because many of the questions on the board's application regarding personal history are "yes/no" questions that would not elicit sufficient information with which to make this type of judgment (see page 22), the potential exists for an applicant with an unsuitable background to progress through the licensure process undetected.

Experience Requirements for Licensure

The board's requirements regarding evaluation of the supervised experience may not ensure that social worker and marriage and family therapist licensure applicants have acquired the experience needed for the practice of their professions.

Applicants for both social worker and marriage and family therapist licensure must fulfill requirements for supervised experience prior to licensure. State law sets the general supervised experience requirements for both professions and the board sets additional requirements.

Requirements for Supervised Experience for Social Workers

In addition to completing educational requirements (see page 7), MISS. CODE ANN. § 73-53-13 (c) (ii) (1972) requires applicants seeking certified social worker licensure to complete twenty-four months of experience acceptable to the board, under appropriate supervision.

In addition to the supervised experience requirement in state law, the board requires a minimum total of 100 hours of supervision and pre-approved professional supervision plans and contracts for supervision between the social workers and supervisors. (See Appendix A, page 59, for the board's requirements for social workers regarding supervised experience.) The board also requires supervisors to submit four evaluations of the licensee on the board's supervision form.

Requirements for Supervised Experience for Marriage and Family Therapists

In addition to completing educational requirements (see page 9), MISS. CODE ANN. § 73-54-17 (a) (1972) requires the following of licensure applicants regarding supervised experience:

(ii) Following the receipt of the first qualifying degree, has at least two years of supervised

experience in marriage and family therapy, or its equivalent, acceptable to the board, provided it meets, at a minimum, the requirements for clinical membership in the American Association for Marriage and Family Therapy (AAMFT).

(iii) Has completed at least 100 hours of supervision of marriage and family therapy as defined by the board. . . .

The American Association for Marriage and Family Therapy accepts licensure by the state of Mississippi and payment of dues to AAMFT as fulfillment of the requirements for clinical membership of that organization.

The board's licensure regulations for applicants regarding clinical experience actually state that applicants must have 200 hours of supervised experience, with at least 100 hours of that experience following receipt of the first qualifying graduate degree (i.e., up to 100 hours of supervision accumulated during graduate training may be counted toward the required 200 hours of clinical supervision.) (See Appendix B, page 60, for the board's requirements for marriage and family therapists regarding supervised experience.) The board is obligated by law to require an applicant to complete either the two years of post-degree supervised experience or, in the alternative, requirements for clinical membership in AAMFT. Because AAMFT accepts licensure by the state of Mississippi and payment of dues to AAMFT as fulfillment of the requirements for clinical membership of that organization, the language in MISS. CODE ANN. Section 73-54-17 (a) (ii) (1972) regarding AAMFT's prerequisites is, in effect, inoperative. (However, because of the statutory language linking the supervised experience requirement to AAMFT, any change in that organization's requirement for clinical membership could affect the board's position on supervised experience requirements.) The board requires the marriage and family therapist licensure applicant to complete his or her experience with an approved supervisor under a plan of supervision approved by the board prior to the beginning of said supervision. The board also requires the applicant's supervisor to complete evaluations of the supervisee on evaluation forms provided by the board.

The instruments that that the board requires supervisors to use in evaluating social worker and marriage and family therapist licensees have not been proven to contain the objective criteria necessary to demonstrate competence in supervised experience. Thus the board cannot ensure that these licensees have acquired the necessary experience required to practice their professions independently.

As noted on page 24, the board requires that as potential social worker and marriage and family therapist licensees complete their number of hours of supervised experience,

their supervisors must utilize the board's approved forms for submitting their evaluations at prescribed intervals.

PEER determined that the board cannot provide evidence that the criteria used on the evaluation forms for social workers and marriage and family therapists are proper measures of a potential licensee's competence during the supervised experience.

- *Evaluation form for social workers*--The form that the board requires supervisors to use to evaluate social workers' supervision experience includes an evaluation assessment that the Louisiana State Board of Certified Social Work Examiners (LSBCSWE) created. The instrument asks supervisors to rate twelve areas of performance (related to social work practice) on a scale of 1 to 10, rather than answering definitively whether the supervisee has demonstrated competency on the area of performance being assessed.

The LSBCSWE could not provide PEER with evidence that the creators of the instrument had conducted any research indicating that the form included adequate criteria for assessing a social worker's practice skills. In addition, the LSBCSWE told PEER that the version of the form Mississippi's board is currently using has since been updated.

- *Evaluation form for marriage and family therapists*--In addition to reporting the hours of supervision and direct client hours, the form also asks the supervisor to rate a supervisee's performance based on nine areas using a Likert scale of 0 to 10, rather than answering definitively whether the supervisee has demonstrated competency on the area of performance being assessed. The board could not provide evidence to PEER that the evaluation instrument contained the necessary criteria to indicate adequate knowledge of marriage and family therapy practice.

Neither the evaluation form for social workers nor the evaluation form for marriage and family therapists answers definitively whether the supervisee has demonstrated competency in the area of performance being assessed.

Without evidence that the instruments used to evaluate social workers' and marriage and family therapists' supervised experience contain the necessary objective criteria, the board cannot assure the public that supervisors' evaluations of potential licensees accurately assess their practice skills.

The board does not require supervisors to conduct practice evaluations (or other training) to assure inter-rater reliability in evaluating applicants' supervised experience prior to licensure.

As noted previously, the board requires supervisors of applicants for social worker or marriage and family therapist licenses to use the board's standard evaluation tools to assess applicants' skills at prescribed intervals during the period of supervision. However, the board does not require the supervisors to conduct practice evaluations using the forms to test for inter-rater reliability⁴ in the evaluation process.

When inter-rater reliability among supervisor evaluations is not tested, the opportunity exists for supervisors to evaluate supervisees in an inconsistent manner, which could result in arbitrary and capricious treatment of potential licensees.

An objective method for evaluating all licensure applicants would ensure that the same type of information is obtained on all applicants and that the information is utilized in the same manner. So as long as the method is objective and is used consistently by all supervisors, this information could be of significant use to the board when deciding whether to license an applicant. By requiring supervisors to participate in practice evaluations, the board could determine whether supervisors' independent evaluations of supervisees would yield similar results. These practice evaluations should increase inter-rater reliability in supervisor rating outcomes. If the practice evaluations show that supervisor evaluations are not similar, this could mean that the values assigned to certain criteria on the instrument the board is using may not be as reliable as originally thought and the board may want to rethink the evaluation instrument/criteria the supervisors are using to assess social workers' and marriage and family therapists' practice skills. Some judgment will always be involved in making the evaluations, but by using this process, the board should reduce subjectivity among supervisors as much as possible.

⁴ *Inter-rater reliability* is the extent to which two or more individuals (i. e., coders or raters) agree. Inter-rater reliability addresses the consistency of the implementation of a rating system.

When inter-rater reliability among supervisor evaluations is not tested, the opportunity exists for supervisors to evaluate supervisees in an inconsistent manner, which could result in arbitrary and capricious treatment of potential licensees.

Maintaining Licensure Information

The board does not maintain an accurate database of licensee information, which could allow individuals without a current license to continue to practice and put the public at risk.

The status of selected licensees shown in the database did not accurately reflect their actual status.

The purpose of a computer-based recordkeeping system, or database, is to be able to access accurate information conveniently. Such a system should increase the ease and efficiency of documentation and retrieval of pertinent information necessary to ensure effective operations of an organization. PEER found inaccuracies in the licensee database of the Board of Examiners for Social Workers and Marriage and Family Therapists. The status of selected licensees shown in the database did not accurately reflect their actual status (e. g., the status of some licenses appeared to have been marked as active, when such was not always the case). The Executive Director told PEER that “the database was accurate but the statuses listed within the database were not.” He stated that his staff was able to determine a licensee’s status by viewing the expiration date for that licensee. The Executive Director told PEER that the expiration date was at all times kept current. This discrepancy in the accuracy of database records renders the information to be unreliable.

Poor records management of a regulatory board hinders the board’s ability to perform its regulatory function to protect the public.

The lack of organized, complete or accurate records management, especially in regard to licensure status, could allow individuals whose licenses have either lapsed or have been revoked to continue to practice, thus putting the public at risk. Poor records management of a regulatory board hinders the board’s ability to perform its regulatory function to protect the public from unlicensed, insufficiently trained and unethical social workers and marriage and family therapists.

Continuing Education for Social Workers

Because state law does not require social workers to complete continuing education in order to renew their licenses, the board cannot enforce its rules requiring such and cannot ensure that social workers stay abreast of the most recent research and techniques of their profession.

The Board's Requirements for Continuing Education for Social Workers

Neither MISS. CODE ANN. §73-53-15 (1972), which governs license renewal for social workers, nor any other CODE section requires social workers to participate in continuing education activities. However, the board's rules and regulations for social workers state that continuing education is necessary because it "fosters the enhancement of general or specialized social work practice, values, knowledge and skills." The board's regulations require the following of social workers regarding continuing education:

- Completion of 4 Social Work Units⁵ (40 hours) for each renewal period (2 years).
- Licensed Social Workers (LSWs) will not submit continuing education at first renewal.
- Licensed Master Social Workers (LMSWs) holding no previous licenses will not submit continuing education at first renewal; LMSWs upgrading from LSW will.
- Licensed Certified Social Workers (LCSWs) will submit continuing education at first renewal if upgrading from LMSW.
- Only one SWU may be carried over from one renewal to the next. The SWU must have been obtained within 6 months prior to current renewal date.

⁵ According to the board's *Rules and Regulations Handbook*, Social Work Units (SWUs) are training hours offered by designated providers of continuing education. One SWU equals ten training hours and one training hour equals one fifty-minute period approved for continuing education.

- When probation results from a continuing education deficiency, probation will continue until the next renewal cycle. (Currently, forty-two licensed social workers in Mississippi have probationary licenses due to their not meeting the board's continuing education requirements.) The board allows licensees to practice with a probationary license. Probationary licenses are not renewed until all mandatory continuing education units are acquired and current renewal requirements (including education) are met.

When social worker licensees do not submit the required continuing education hours, the rules and regulations call for disciplinary actions to be taken against social work licensees. However, because the requirements are not in law, the board cannot legally enforce them.

Effect of No Statutory Requirement for Continuing Education for Social Workers

Because the requirement for continuing education for social workers is not stated specifically in the law, in the event that the board does take sanctions against a social worker who does not fulfill continuing education requirements, the board may not be able to defend its actions in court if said social worker appeals an adverse licensing decision.

In many professions, continuing education is accepted as a necessary requirement for ensuring that practitioners who work with the public maintain the adequate skills and knowledge to help their clients/patients. However, when licensed social workers do not fulfill the board's requirements regarding continuing education, the board cannot legally do anything to prevent these individuals from continuing to serve the public. The public may then receive inadequate service and/or treatment from social workers who might not have stayed abreast of the latest professional developments in their fields.

In addition, because the requirement for continuing education for social workers is not stated specifically in the law, in the event that the board does take sanctions against a social worker who does not fulfill continuing education requirements (e.g., suspends or denies renewal of his/her license), the board may not be able to defend its actions in court if said social worker appeals an adverse licensing decision. PEER found instances in which social worker licensees were not fulfilling continuing education, but found no evidence that the board had taken disciplinary actions against them.

Continuing Education for Marriage and Family Therapists

Rather than verifying continuing education annually for all licensed marriage and family therapists, the board's policy is that it *may* randomly audit a percentage of licensees' continuing education hours. The board is not consistently conducting these random audits, and when it does, it conducts them after licenses have been renewed. Thus the board does not ensure that all licensed marriage and family therapists receive the necessary continuing education to remain professionally competent prior to having their licenses renewed.

Statutory and Board Requirements for Continuing Education for Marriage and Family Therapists

MISS. CODE ANN. Section 73-54-27 (5) (1972) states the following regarding continuing education of marriage and family therapists:

The board shall require each license holder to participate in approved continuing education activities in order to renew a license issued under this chapter.

The board's rules and regulations contain the following continuing education requirements for licensed marriage and family therapists:

- 35 hours of continuing education every 2 years,⁶ 4 hours of which must be in professional ethics.
- No continuing education required for the first renewal period.
- The license of any marriage and family therapist who fails to renew biennially during the month of September shall lapse. The failure to renew the license will not deprive the marriage and family therapist of the right to renewal later. Such lapsed license may be renewed within a period of 2 years after such lapse of payment of all fees in arrears.

The Rules and Regulations Regarding the Licensure of Social Workers and Marriage and Family Therapists states that the board may randomly audit a percentage of the continuing education reports accompanying renewal applications. The board requires licensees whose continuing

⁶ According to the board's *Rules and Regulations Handbook*, one continuing education hour (for marriage and family therapists) equals sixty minutes.

education reports are audited to provide a copy of the official documentation of their continuing education activities. If a licensee fails to provide the board with official documentation of the total hours listed on their renewal application in a timely manner (not to exceed thirty days following the time they are notified of the audit), the renewal application will not be approved and the license will lapse.

If during the audit, the board disqualifies any of the documented continuing education hours and the licensee does not have a sufficient number of acceptable hours remaining for that renewal period, the board, at its discretion, may renew the license under the conditions that the continuing education hours will be obtained within six months of the notice of the deficiency. Continuing education hours acquired to meet the deficiency may not be applied to any other renewal period. If the licensee does not rectify the deficiency within that six-month period, the license will be subject to revocation for failure to comply with the continuing education requirements.

The board may grant a waiver for up to one half of the thirty-five hours of continuing education required for any two-year renewal period, if it can be shown that the ability to comply was beyond the capabilities of the licensee (i.e., severe illness, disability, residence abroad). The licensee must state in a written request for a waiver that he/she did not practice marriage and family therapy during the portion of the renewal period for which the waiver is requested. Such request for a waiver must be accompanied by written documentation acceptable by the board.

No Assurance that Marriage and Family Therapist Licensees Complete Continuing Education Requirements

The board's policy that it may randomly audit a percentage of continuing education and the board's practice of not consistently performing audits do not ensure that all marriage and family therapist licensees receive the necessary continuing education to remain professionally competent prior to having their licenses renewed.

As noted above, state law requires that each marriage and family therapist license holder participate in approved continuing education activities in order to renew a license. The implementation of this statutory requirement is the responsibility of the Board of Examiners of Social Workers and Marriage and Family Therapists. However, the board's current policy that it *may* conduct a random audit of a percentage of licensees' continuing education (instead of verifying continuing education for all licensed marriage

and family therapists prior to renewal) does not ensure that all marriage and family therapists have completed the number of continuing education hours required by the board so that they may stay abreast of professional developments in their field. As the board's policy is currently written, it not only does not specify the number or percentage of licensees that it will audit if it conducts such audits, but also allows the board to forgo completely the auditing of licensees' continuing education hours.

The board's policy allows a potentially large number of marriage and family therapists to renew their licenses without providing evidence that they received the necessary continuing education to remain current in professional competencies.

The board's Executive Director stated that when the board does audit marriage and family therapists' continuing education, it audits 10% of licensees. According to the Executive Director, as of May 4, 2007, the only "complete" audit that the board had conducted during its ten years of existence was completed in 2001. That consisted of six persons' continuing education being audited (reportedly, 5% of licensees). The Executive Director stated that the most recent audit the board's staff had conducted of marriage and family therapists' continuing education was for the September 2006 renewal period but that the audit had not been completed.

Not verifying the reported continuing education hours of all marriage and family therapists could allow some to practice without their continuing education hours being audited for an unlimited number of years. Thus the board's policy allows a potentially large number of marriage and family therapists to renew their licenses without providing evidence that they received the necessary continuing education to remain current in professional competencies. This could increase risk to the public.

No Assurance that Licensees Comply with Continuing Education Requirements Prior to License Renewal

The board's practice of conducting continuing education audits after license renewal does not ensure that licensees stay current on professional developments in their field. Thus the board does not fully protect the public from incompetent practitioners.

The marriage and family therapists whose continuing education is audited will have already received their renewed licenses by the time they have to submit proof/documentation of completed continuing education.

When the board does conduct audits of licensed marriage and family therapists, it does so after renewing their licenses. As of May 4, 2007, the board's Executive Director stated that the last audit the board's staff had conducted of marriage and family therapists' continuing education was for the September 2006 renewal, but that the staff had not completed the audit (approximately eight months after the renewal period). The Executive Director acknowledged that the staff conducts continuing education audits after renewal of licenses.

The marriage and family therapists whose continuing education is audited will have already received their renewed licenses by the time they have to submit proof/documentation of completed continuing education as part of the audit. Therefore, their licenses are renewed before they have demonstrated training to help ensure continued competence. The board's practice of auditing continuing education post-renewal prevents it from fulfilling its responsibility to help ensure that the public is protected from incompetent marriage and family therapists.

Inadequacies in Complaints and Disciplinary Processes

The enforcement of state law and regulations for licensed social workers and marriage and family therapists is greatly dependent on how well the regulatory body administers processes for receiving and handling complaints against practitioners and the expediency and uniformity with which it takes disciplinary action against violators. PEER examined the complaint and disciplinary processes of the Board of Examiners for Social Workers and Marriage and Family Therapists.

Deficiencies in Management of Complaints Process

The Board of Examiners for Social Workers and Marriage and Family Therapists does not have an effective system for managing complaints filed against social workers and marriage and family therapists. The board does not maintain a master record or log of complaints containing all legally required information, as well as the current status of the complaints. Minutes do not contain a complete record of the board's actions taken on complaints. Individual complaint files do not consistently contain complete documentation, including a record of actions taken on that individual complaint, copies of letters that should have been sent to complainants and licensees according to the board's rules and regulations, or an explanation of the reasons for actions taken. Also, the board does not establish a timeline or milestones for resolution of complaints.

PEER determined that the board's complaint process suffers from the following deficiencies:

- The board does not maintain a complete master record or log of complaints (i.e., it does not contain all information as required by law and the board's own regulations).
- The board's minutes do not contain a complete record of the board's actions taken on complaints.

- The board's individual complaint files do not consistently contain complete documentation, including a record of actions taken on that individual complaint. Also, the board does not establish a timeline or milestones for resolution of complaints (i.e., scheduled points at which the investigators or staff must either report on conclusion of that phase of the process or provide a written explanation of the status of the complaint and why its progress has been delayed).

The following sections contain discussions of these deficiencies in the board's complaint process.

Statutory and Board Requirements and Procedures for Complaints

Statutory Requirements for Handling Complaints

Regarding social workers, MISS. CODE ANN. § 73-53-19 (1972) states that the board shall receive all complaints concerning a licensee's business or professional practice and that each complaint received shall be logged, recording at a minimum the following information:

- licensee's name;
- name of the complaining party, if known;
- date of complaint;
- brief statement of complaint; and,
- disposition.

In addition to collection of the above information, the *Rules and Regulations Regarding the Licensure of Social Workers and Marriage and Family Therapists* requires that all complaints be assigned a case number and logged.

Although not specifically required by law for regulation of marriage and family therapists, PEER believes that the board has the authority to set up a complaints process for both social workers and marriage and family therapists and the board has done so in its rules and regulations.

The Complaints Process Mandated by the Board's Rules and Regulations

The board's *Rules and Regulations Regarding the Licensure of Social Workers and Marriage and Family Therapists* outlines the following complaints process. (See Appendix C, page 62, for a flow chart of the board's process for

complaints as outlined in the board's rules and regulations.)

When an official complaint is received, it is to be assigned for review to a Discipline Specific Committee member representing the discipline against which the complaint has been made. This assignment for review is made by the board's Chair on a rotating basis of board members and is for the purpose of determining the validity and appropriateness of the complaint in accordance with the provisions in the Standards of Conduct.

Once the Discipline Specific Committee determines that a complaint is valid and an investigator is assigned, the board's rules and regulations require that the board notify, in writing, the licensee against whom the complaint has been made of the issues which are the basis of the complaint and in a manner specific enough to enable the licensee to defend against the charges.

Upon completion of the investigation, the investigator is to file a detailed report of the investigative finding that will include a recommendation for dismissal or hearing. The board, upon referral recommendation from the Discipline Specific Committee, is to consider the recommendations and will vote on either dismissing the complaint or proceed to disciplinary sanctions. The board's rules and regulations state that if the complaint is dismissed, the board's Chair is to notify the complainant and the licensee in writing of the decision and why it was made.

According to the process outlined in *Rules and Regulations Regarding the Licensure of Social Workers and Marriage and Family Therapists*, any person who disagrees with a sanction imposed by the board has the right to an administrative hearing. Individuals may represent themselves or be represented by an attorney and have witnesses present. They may also present relevant written documentation at the hearing. Subpoenas may be issued and all matters required by law must be observed.

Incomplete Complaint Log

The board does not maintain a master record or log of complaints that includes some of the information required by law and the board's regulations (i.e., complaint description or disposition) and thus cannot easily be used to monitor the status of complaints.

The board's complaint log does not contain the statement of complaint (case description) and status/disposition of the complaint, even though state law and the board's rules and regulations require that this information be logged.

The board's Official Complaint Log is a handwritten log that contains the complainant's name, date received, licensee or organization that is the subject of the complaint, and case number. However, the log does not contain the statement of complaint (case description) and status/disposition of a complaint, even though state law and the board's own rules and regulations require that this information be logged (see page 35). That information may be available in one or more other locations (i.e., minutes, complaints filed reports, complaint case files); however, it is not maintained in a centralized report/complaint log.

As a result, board members and/or staff members cannot quickly verify the status or disposition, with certainty, of any one case for a licensee who is the subject of a complaint, the complainant, someone inquiring of a social workers' or marriage and family therapists' disciplinary history, or even an outside observer such as an auditor or evaluator who needs to know a case's status.

Because the board does not maintain a complete complaint log, it is unable to monitor effectively the status of complaints to ensure timeliness of resolution, analyze trends in complaint information that might provide rationale for potential statutory or policy changes, track licensees' competence over time, or ultimately assess its own performance in protecting the public.

Insufficient Official Record of the Board's Actions on Complaints

The board's minutes do not contain a complete record of the board's actions taken on complaints.

The timely and judicious handling of complaints is one of the primary responsibilities of such a board. These objectives cannot be achieved without accurate records and active management of the complaint process.

MISS. CODE ANN. Section 25-41-11 (1972) requires that all public bodies keep minutes and that these minutes reflect the final actions taken by these bodies. This codifies a long-standing legal rule in Mississippi that agency action taken by executive bodies with multiple members must be reflected in official minutes. (See *Lee County v. James*, 174 So. 76 [Miss, 1937] and *State Highway Department v. Duckworth et al*, 172 So. 148 [Miss, 1937].) These cases make clear that action not reflected in a board's official minutes is not legally enforceable. PEER reviewed board minutes for the period August 4, 1997, to April 2007 to determine the official disposition of the seventy-two official complaints submitted to the board from its inception through April 2007. According to the Executive Director, board minutes are "missing" for the February 2003 meeting. Based on available board minutes, of the seventy-two official complaints:

- twenty-three were dismissed with no sanctions imposed (e. g., cases that the board determined to be without merit or outside of its jurisdiction);
- three were "dismissed" (this is the language used by the board) with sanctions imposed;
- eighteen were pending/open. There was no information in the board minutes concerning the status of the remaining twenty-eight complaints. A review of the board's complaint files and reports indicates that the board dismissed six of these cases with no sanctions imposed and has assigned two other cases to board members for review, which moves them to the pending category. Three of the cases are new and have not yet been assigned to a board member for review. The board's staff was unable to locate the file for one of the remaining seventeen cases and the other sixteen files contained no information as to the status of the complaint (see related finding on page 39).

Missing and inaccurate board minutes, missing files, and no record of action taken on complaints are serious problems for a regulatory board. The timely and judicious handling of complaints is one of the primary responsibilities of such a board. These objectives cannot be achieved without accurate records and active management of the complaint process.

Insufficient Documentation in Complaint Files and No Timeframe Required for Complaint Disposition

The board's individual complaint files do not consistently contain complete documentation of the history and disposition of each individual complaint. Also, the board does not establish a timeline or milestones for resolution of complaints.

The board does not ensure that all complaint files contain documentation of the disposition of a complaint, including notification to the complainant and licensee.

The board's *Rules and Regulations Regarding the Licensure of Social Workers and Marriage and Family Therapists* states that if a complaint is dismissed, the complainant and the licensee are to be notified in writing by the board's chair.

Failure to correspond formally with complainants and licensees who are the subject of complaint investigations can diminish public trust in the regulatory process.

PEER reviewed the complaint files for complaints that were filed during fiscal years 2002 through 2006 (twenty-six files). PEER found that the files did not consistently contain documentation at the closure of a case when the minutes or other board reports indicated that cases had been dismissed. For instance, of the twenty-six complaint cases filed during fiscal years 2002 through 2006, board minutes indicated that thirteen had been dismissed. However, only eight of those thirteen complaint case files contained documentation indicating dismissal (e. g., letters to complainants or sanctions imposed). The board's Executive Director told PEER that just because the proper documentation was not always in all files did not mean that letters to complainants or licensees indicating that cases had been dismissed had not been mailed. He said it was possible that the staff just did not make copies of the letters for the files.

It is critical for a regulatory board to bring proper closure to all complaints by sending the correspondence required in its rules and regulations to the appropriate parties. Failure to correspond formally with complainants and licensees who are the subject of complaint investigations can diminish public trust in the regulatory process.

Because the board does not consistently maintain a record of actions taken on complaints (including an explanation of the reasons for the action taken) in the complaint files and does not establish a timeline or milestones for resolution of complaints, PEER could not evaluate the timeliness of the board's complaints process.

Neither a board member, staff member, nor a third party such as PEER would have the information needed in individual complaint files to trace the process from the point at which the complaint was received by the board until final action on the complaint.

In reviewing the twenty-six complaint files for fiscal years 2002 through 2006, PEER found that the individual complaint files do not contain a complete record, including dates, of the process followed for the resolution or disposition of each particular complaint. For example, complaint files do not contain a record of the date on which the case was referred to an investigator. (When board members recommend complaints for investigation, their practice is to contract with outside investigators to perform investigations.) Neither a board member, staff member, nor a third party such as PEER would have the information needed to trace the process from the point at which the complaint was received by the board until final action on the complaint, including a brief explanation of the reasons for the action taken. For example, the only explanation found in the files of several cases that the board dismissed was that the case was "without merit." The file should contain a brief explanation of why the complaint lacked merit. In terms of protecting the public, it is as important to document and explain reasons for dismissing a case as when imposing sanctions.

From the records that the board maintains, PEER concluded that nineteen complaint cases are over five years old, which calls into question the board's management of its complaints process.

Also, the board's rules and regulations do not require timelines for resolution of complaints or specific milestones in the complaints process. Although MISS. CODE ANN. Section 73-53-19 (1972) requires that the board maintain a complaint log, the complaint log is incomplete (see discussion on page 37) and the board's minutes are not reliable sources of this information (see discussion on page 38).

From the records that the board maintains, PEER concluded that nineteen complaint cases are over five years old, which calls into question the board's management of its complaints process. Best practices would require that the board require its staff and investigators to complete steps of the complaints resolution process within a specified time frame and that complaints against practitioners be handled quickly and efficiently for the benefit of not only the public, but also the social workers and marriage and family therapists who have had complaints filed against them. Either the board and its investigators and staff are disposing of these complaints within a reasonable time frame, but are not recording their actions regarding such in the complaint files, or the timeframes for disposition of the complaints are unreasonable.

If complaints against social workers or marriage and family therapists have indeed lingered without resolution for five or more years, such situations could pose a risk to the public. A potentially unlimited number of individuals could have received unethical or unprofessional treatment from practitioners against whom complaints had already been filed, causing problems for a population that is already vulnerable and in need of assistance.

Failure to Comply with State Law Regarding Publication of Licensee and Disciplinary Action Information

The board has not complied with state law requiring annual publication of names of social worker licensees and those licensees who had license revocations or suspensions within the preceding year.

Statutory Requirements for Publishing Disciplinary Actions

State law requires that the Board of Examiners for Social Workers and Marriage and Family Therapists publicize the names of social worker licensees who have had disciplinary actions taken against them within the last year. MISS. CODE ANN. § 73-53-27 (5) (1972) states:

The board shall publish an annual list of the names and addresses of all [social work] licensees under the provisions of this chapter, and of all persons whose licenses have been revoked or suspended within the preceding twelve months.

The law does not specifically require the board to publish the disciplinary actions taken against marriage and family therapists.

Reporting of Disciplinary Sanctions Against Social Workers to National Professional Body

The board reports disciplinary sanctions to a national association for use in the National Practitioners Database; however, the general public does not have access to this information.

The board currently reports disciplinary sanctions regarding social worker licensees to the Association of Social Work Boards (ASWB) and that body subsequently reports such to the National Practitioners Database; however, the general public does not have access to these databases. They are only available to entities such as state licensing boards, hospitals, and federal agencies. Therefore, in order for someone to learn about a social worker licensee's complaint history, that person would have to contact the board and inquire. (As noted in the previous section, PEER believes the board's complaints process to be inadequate.) The Executive Director believes

that the board does not report disciplinary sanctions against marriage and family therapists to any professional body or to the public.

The board does not have any formal, written regulations or policies regarding the publication of names of social worker licensees or disciplinary actions taken against them.

No Reporting to the Public of Disciplinary Sanctions

The only method the public could use to identify sanctions issued would be contact the board and inquire. Because the board does not maintain general descriptions of complaints and/or resolutions of complaints in its log, it cannot ensure that accurate responses would be given on all licensees.

The board does not use an adequate method of disseminating information to the public regarding sanctions against practitioners. The only method the public could use to identify sanctions issued would be contact the board and inquire. Also, as noted in the previous section, because the board does not maintain general descriptions of complaints and/or resolutions of complaints in its log, it cannot ensure that accurate responses are given on all licensees it regulates.

Other states use such methods as board websites (e. g., Florida) and periodic newsletters distributed to licensees (e. g., Arkansas) to disseminate such information. No information on disciplinary actions regarding either social workers or marriage and family therapists is available on the website of the Board of Examiners for Social Workers and Marriage and Family Therapists. The board should provide information that is easily accessible to the public regarding sanctions against licensees so that the public can make informed choices when obtaining services. The board's website states its purpose is to ensure that the public is protected from the unprofessional, improper, unauthorized and unqualified practice of social work and marriage and family therapy. However, the board's lack of disclosure to the public regarding sanctions defeats this purpose. A person unknowingly could obtain social work or marriage and family therapy services from licensed professions who have had sanctions against them, thereby placing themselves at an increased risk of harm, depending on the reason for the sanction.

Unenforceable Board Rules and Regulations Governing Standards of Conduct

Although the board has created a unified set of rules and regulations governing standards of conduct for both social workers and marriage and family therapists, several of these standards are unenforceable due to lack of statutory authority and vagueness.

The board lacks statutory authority to adopt and implement certain regulations for social workers and marriage and family therapists.

In reviewing the provisions of law dealing with the regulation of both social workers and family and marriage therapists, PEER extends a strict construction to these statutes. Courts in Mississippi have consistently held that statutes regulating professionals are penal in nature and should be construed strictly. (See *Hogan v. Mississippi Board of Nursing*, 457 So 2d. 931 [Miss, 1984] for cases declaring that licensure statutes are penal and that the proceedings brought under them are quasi-criminal in nature.) The import of this rule is that such statutes must be construed strictly against the state in favor of the party appearing before the board. (See *Hogan*, supra.)

Although it is reasonable for a unified board to attempt to consolidate the rules and regulations governing the profession's standards of conduct, current law does not fully support the board in these efforts.

PEER views any regulation adopted under color of these statutes in light of a requirement that when a court would construe such provisions, it would be required to determine whether the statute fails to reasonably inform the accused of what conduct will render him liable for prosecution. (See *State v. Burnham*, 546 So 2d. 690 [Miss, 1989].) Additionally, this requires that the court not extend the statute beyond its clear descriptive terms. (See *Attalla Loans v. Standard Discount Corporation*, 161 So 2d 631 [Miss, 1964].)

In the cases discussed herein, PEER believes that the board's regulations regarding standards of conduct fail to meet these tests.

Statutory Standards of Conduct for Social Workers and Marriage and Family Therapists

Although it is reasonable for a unified board to attempt to consolidate the rules and regulations governing the profession's standards of conduct, current law does not fully support the board in these efforts.

MISS. CODE ANN. Section 73-53-17 (1972) authorizes the board to take disciplinary action against a social worker who commits any of the listed offenses (see Appendix D,

page 63). While the Marriage and Family Therapy Licensure Act of 1997 incorporates each of these violations, MISS. CODE ANN. Section 73-54-29 (1972) also contains five additional grounds for disciplinary action (see Appendix E, page 66). Included is the requirement that marriage and family therapists abide by the code of ethics promulgated by the American Association for Marriage and Family Therapy. No mention of these additional standards or a reference to the code of ethics of the National Association of Social Workers (NASW) is found in the statute that governs the licensure of social workers. Since MISS. CODE ANN. Section 73-53-17 (b) (1972) authorizes the board to sanction persons “engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public in the course of professional services or activities,” the board would have the power to define such conduct, including adopting standards in the NASW code of ethics, provided that any adopted standard is unambiguous and enforceable.

The standards of conduct adopted by the board requiring reporting of violations by a licensee lack statutory authority.

The board’s rules and regulations contain the following violations that are not found in either the statute for social workers or the statute for marriage and family therapists:

- Failure to notify the board of the suspension, probation or revocation of any past or currently held license in social work, marriage and family therapy, or any other health care field, in this or any other state, or any disciplinary action taken against the licensee by any licensing board or professional association.
- Failure to report to the appropriate board known or suspected violation of the laws or regulations governing the practices of mental health professionals.

There is no applicable Mississippi statute requiring the reporting of any violation to the board.

Both regulatory statutes are silent on the requirement that the professional report these violations to the board or face disciplinary action. Even though the American Association for Marriage and Family Therapy’s Code of Ethics states, “Marriage and family therapists comply with applicable laws regarding the reporting of alleged unethical conduct,” there is no applicable Mississippi statute requiring the reporting of any violation to the board.

While the enforceability of these standards has not been challenged to date, a court could find that the board lacks authority to enforce these additional standards of conduct against either social workers or marriage and family therapists.

The board has adopted an additional standard that is unenforceable against social workers.

The board adopted a standard of conduct that, while enforceable against marriage and family therapists through incorporation of their national association's code of ethics, is not enforceable against social workers. The rules and regulations contain the following violation that does not have statutory authority under the statute regulating social workers:

- Payment of commissions, rebates or other forms of remuneration for referral of clients for professional services.

This violation is found in the code of ethics for the American Association for Marriage and Family Therapy, but is not presently enforceable against social workers. Currently, the law has not been amended to include the above standard of conduct and therefore social workers should not be disciplined for failure to comply with this standard.

By adopting the code of ethics for the National Association of Social Workers, the board has implemented standards of conduct that are vague and unenforceable because they cannot be easily defined in court.

The following are examples of ethical standards approved by the National Association of Social Workers that are vague or aspirational and not enforceable in court:

- 1.05(a) Social workers should understand culture and its function in human behavior and society, recognizing the strengths that exist in all cultures.
- 1.14 When social workers act on behalf of clients who lack the capacity to make informed decisions, social workers should take reasonable steps to safeguard the interests and rights of those clients.
- 3.07(c) Social workers who are administrators should take reasonable steps to ensure that adequate agency or organizational resources are available to provide appropriate staff supervision.

- 5.01(a) Social workers should work toward the maintenance and promotion of high standards of practice.

The above standards are unenforceable because they are ambiguous and not easily defined in court or by a social worker in the course of practice. The association includes a paragraph warning that:

Some of the standards that follow are enforceable guidelines for professional conduct, and some are aspirational. The extent to which each standard is enforceable is a matter of professional judgment to be exercised by those responsible for reviewing alleged violations of ethical standards.

The burden is on the board to review the code of ethics for social workers and adopt only those standards that are unambiguous or change the wording to make the standards enforceable.

The board has incorporated several enforceable standards from the NASW code of ethics into its rules and regulations and if the board intends for social workers to be held to any additional standards, the burden is on the board to review the code of ethics and adopt only those that are unambiguous or change the wording to make the standard enforceable.

The Marriage and Family Therapy Licensure Act of 1997 contains language that contradicts the current practice of law.

As noted on page 43, the courts have construed that licensure statutes are penal in nature and should be construed strictly against the state. However, MISS. CODE ANN. Section 73-54-3 (1972) states, in part, that, "This chapter shall be liberally construed to carry out these policies and purposes." Since statutes are strictly construed when challenged in court, this provision contradicts prevailing canons of interpreting penal statutes.

Problems with Financial Management

The Internal Control Environment

The management of any organization is responsible for establishing a proper control environment. Management's attitude toward providing strong internal controls directly impacts the effectiveness of the organization's accounting system. As stated in *Auditing, A Risk Management Approach* (5th Ed.) by Larry Konrath:

*The control environment is determined by the attitudes of the persons in charge of the internal control system. Management's attitude toward control has a significant impact on control effectiveness; thus, management must be **strongly supportive** of internal control and must **communicate that support** throughout the organization. Management that does not possess a control-conscious attitude will serve to undermine the system. . . .Lack of concern for accurate accounting can negate other controls and cause the entire system to be ineffective. Internal control is only as strong as the **ethics and competence** of the persons who are responsible for it. (Author's emphasis)*

An internal control system is a system of checks and balances put into place by management of an organization to provide reasonable assurance regarding the achievement of objectives in the reliability of financial reporting, compliance with applicable laws and regulations, and the effectiveness and efficiency of operations.

To assist state agency managers in creating an appropriate internal control environment, the Department of Finance and Administration has established guidelines for internal controls through its state agency accounting policies and procedure--i. e., the *Mississippi Agency Accounting Policy and Procedure Manual* (MAAPP manual). State entities, such as the Board of Examiners for Social Workers and Marriage and Family Therapists, must ensure that agency managers adhere to MAAPP manual provisions in order to account accurately for and protect state assets.

State Auditor's 2003 Limited Internal Control and Compliance Review

The board has not implemented internal controls recommended by the State Auditor to improve cash receipts accounting, controls over the bank clearing account, and timely deposits of cash receipts into the bank clearing account and State Treasury.

To ensure fiscal accountability within smaller agencies of state government, the State Auditor performs limited internal control and compliance reviews. The reviews evaluate an agency's compliance with state laws, its own internal controls, state policies and procedures, and its own policies and procedures. Following completion of the fieldwork, the State Auditor issues a management report to the agency's management containing findings of deficiencies or noncompliance, if any, and

recommendations for improving the agency's internal controls.

The State Auditor's Office conducted a limited internal control and compliance review of the Board of Examiners for Social Workers and Marriage and Family Therapists in 2003, reporting the results on May 15, 2003. In his June 6, 2003, written response to the State Auditor, the board's Executive Director described actions that the board's staff would take to implement the State Auditor's recommendations and improve the board's internal control environment. Although the board and staff have taken steps to improve some of the internal control deficiencies identified by the State Auditor, the board has not fully implemented all of the actions contained in its written response to the State Auditor, as described below.

Cash Receipts Accounting

Although the board has created a system of checks and balances for its cash receipts process, no board member conducts a monthly review of the cash receipts process as the board had agreed to do in its response to the State Auditor. Also, the board's procedures for receiving and recording cash receipts could result in misappropriation of funds.

Cash Receipts Weaknesses Identified by the State Auditor

The State Auditor's 2003 internal control review determined that the board's staff were not recording receipts on a cash receipts log when initially received. As a result, no person independent of the cash receipts function ensured agreement between a cash receipts log, deposit slips, and the board's books to ensure that all receipts had been properly recorded.

In response to the State Auditor's management report, the board's staff stated that an administrative assistant would maintain a cash receipts log for incoming funds, with the Executive Director making daily deposits to the bank and recording each deposit in a bank account register. The response further stated that a board member would conduct a monthly review of the cash receipts.

Although the board's staff has implemented a checks and balances system regarding the cash receipts process since 2003, board oversight of this process would ensure an additional level of internal control.

PEER reviewed the board's accounting records for August and October 2006 and determined that the board's staff has implemented a portion of the cash receipts controls described in the board's response to the State Auditor. On a daily basis, an administrative assistant opens the mail, creates a daily cash receipts log, completes a deposit slip, and deposits the collections into a bank clearing account. Prior to the deposit being made, the Executive Director or the second administrative assistant compares the cash receipts log to the actual checks or money orders to

ensure that the deposit correctly represents the day's cash collections and then initials the log. The Executive Director enters each day's deposit into a bank account register that he maintains. According the board's chairman and Executive Director, no board member conducts a monthly review of the cash receipts process as the board stated that it would in the agency's response to the State Auditor. The board's chair said that he was unaware that a board member was responsible for reviewing the cash receipts process. Although the board's staff has implemented a checks and balances system regarding the cash receipts process since 2003, board oversight of this process would ensure an additional level of internal control, especially given the small administrative staff working for the board (i. e., three employees).

Cash Receipts Weaknesses Identified by PEER

Having a single employee open mail, create a cash receipts log, and make a deposit slip increases the possibility of misappropriation of funds.

In addition to weaknesses identified by the State Auditor, PEER identified another potential weakness in the board's internal controls relative to cash receipts. Having a single employee open mail, create a cash receipts log, and make a deposit slip increases the possibility of misappropriation of funds. For example, it is possible that the individual could withhold some checks or money orders and enter the remainder on the cash receipts log and deposit slips. The cash receipts records reviewed by the third-party reviewer would reconcile with the actual checks and money orders presented because the reviewer would be unaware of the diversion. While PEER did not detect or have any suspicions of fund diversion in the board's procedures, the board's internal controls would be strengthened if two employees opened the mail together and created each day's cash receipts log. Under these conditions, diversion of funds would require collusion by the two employees.

The staff does not reconcile cash received each day to a list of licensees due for renewal.

Another potential flaw in the board's internal controls is the failure of the board's staff to reconcile cash received each day to a list of licensees due for renewal. Forty-five days prior to their expiration dates, the board's staff sends licensees renewal notices. When the staff receives cash for renewals, they do not compare the amounts received to a list of licensees who should be renewing their licenses to ensure that licensees have made payments prior to the expiration dates and in the correct amounts. The board's staff literally deposits whatever collections are received each day with the anticipation that licensees will be prompt and diligent regarding their renewals.

Controls Over Bank Clearing Account

Although there is a degree of segregation of duties regarding the depositing of and accounting for cash receipts, the Executive Director is solely responsible for writing checks on the agency's bank clearing account and for reconciling the monthly bank statement, without oversight of other staff or board member.

In 2003, the State Auditor determined that the board's employee who was responsible for preparing and taking deposits to the bank also recorded receipts into the accounting records. The management report further noted that this same employee prepared checks, signed checks, mailed checks and maintained physical custody of unused checks. Also, the board did not maintain a record of bank account activity apart from the bank statements.

In response to the State Auditor's management report, the board's staff stated that the Executive Director would make daily deposits to the bank account, maintain the bank account register, and record cash receipts into the Statewide Automated Accounting System (SAAS). The response further stated that an administrative assistant would conduct monthly reconciliations of the cash receipts log, cash receipts to SAAS, bank account register, and bank statements. In addition, a board member would perform periodic reviews of bank account reconciliation to ensure fiscal accountability.

PEER selected August and October 2006 as months on which to perform test work of the board's accounting records and determined that the board's staff had implemented only a portion of the internal controls contained in its written response to the State Auditor relative to the agency's bank clearing account. An administrative assistant, rather than the Executive Director, deposits cash collections in the bank, while the Executive Director maintains a bank account register and records cash receipts into SAAS. Presently, due to staff turnover, the Executive Director, rather than an administrative assistant, conducts monthly reconciliations of the cash receipts log, cash receipts to SAAS, bank account register, and bank statements.

The possibility of misappropriation of agency funds exists without independent oversight of the bank clearing account by a third-party reviewer, such as a board member.

According to the board's chair and the Executive Director, no board member performs reviews of bank account reconciliations. This failure is especially noteworthy given that the Executive Director is the primary signatory on the bank account, writes checks on the account transferring agency collections to the State Treasury, and reconciles the monthly bank statement. While PEER did not detect or have any suspicions of improper actions by the Executive Director, the possibility of misappropriation of agency funds exists without independent oversight of the bank

clearing account by a third-party reviewer, such as a board member.

Timely Deposits of Cash Receipts into State Treasury

Contrary to MISS. CODE ANN. Section 7-9-21 (1972) and the Department of Finance and Administration's policy, the board does not always immediately deposit cash collections into its clearing account on a daily basis and then transfer daily collections in excess of \$1,000 from the clearing account to the State Treasury by the next business day.

MISS. CODE ANN. Section 7-9-21 (1972) states the following regarding the transfer of public funds into the State Treasury:

*All state officials shall make a detailed report to the State Fiscal Officer and pay into the State Treasury all public funds. . . which are required to be paid into the Treasury. Such funds shall be deposited in the State Treasury **by the end of the next business day following the day that such funds are collected.** . . . [PEER emphasis added]*

This CODE section also allows the Department of Finance and Administration (DFA), with the advice and consent of the State Treasurer, to promulgate regulations to provide for other than daily deposits of accounts by a state agency. In 1998, DFA promulgated a policy whereby state agencies must deposit funds into the State Treasury when such funds accumulate to \$1,000 or on a weekly basis, whichever occurs first.

Failure to make prompt deposits and timely transfers of funds could result in the loss of investment earnings and increases the risk of theft or misplacement of funds while being held by the board.

The State Auditor's 2003 internal control review determined that the board's staff failed to deposit cash receipts into its clearing account promptly and did not make subsequent transfers of funds to the State Treasury in a timely manner. In its response to the State Auditor, the board stated that deposits would be made to the clearing account daily and cash receipts would be transferred to the State Treasury daily or no later than the next business day as described by law.

PEER performed test work on the board's accounting records to determine whether the board had complied with state law and DFA policies regarding timely deposits. PEER reviewed the board's accounting records for August and October 2006 and determined that the board received collections on twelve days during each month. PEER made the following observations regarding collections:

- *Deposit of receipts into clearing account*--During August 2006, the staff deposited the collections into the bank clearing account immediately upon receipt for all twelve days.

During October 2006, the staff deposited the collections into the bank clearing account immediately upon receipt for ten of the twelve days in which the agency received funds. For the two days on which the staff did not immediately deposit the collections, the staff made a deposit the next day.

- *Transfers over \$1,000 to the State Treasury*--With regard to August daily collections in excess of \$1,000 that should have been transferred to the State Treasury within the next business day, the board's staff failed to make timely transfers on two days--August 16 for \$1,995 and August 30 for \$1,110. In both cases, board staff made the transfers within two business days.

With regard to October daily collections in excess of \$1,000, the board's staff failed to make timely transfers on three days--October 4 for \$8,440; October 10 for \$1,995; and October 23 for \$1,025. The board's staff transferred the October 4 and October 10 collections within two business days and the October 23 collections within three business days.

While the board's cash collections vary from day to day and represent relatively small amounts, it is imperative that the board's staff comply with state law and DFA policy and deposit the collections into the clearing account and subsequently the State Treasury on a regular and timely basis.

As stated in the State Auditor's 2003 report, failure to make prompt deposits and timely transfers of funds could result in the loss of investment earnings and increases the risk of theft or misplacement of funds while being held by the board. MISS. CODE ANN. Section 73-53-10 (1972) states, "Any interest earned on this special fund [Board of Examiners for Social Workers and Marriage and Family Therapists] shall be credited by the State Treasurer to the fund and shall not be paid into the State General Fund." Therefore, it is incumbent upon board staff to comply with state law, DFA policy, and the State Auditor's recommendations and make timely transfers from the bank clearing account to the State Treasury so that investment earnings on the fund may be maximized.

Recommendations

Overlap in the Scope of the Social Work and Marriage and Family Therapy Professions

1. Based on information gathered from this review of the Board of Examiners for Social Workers and Marriage and Family Therapists, PEER's recent review of the Board of Licensed Professional Counselors (#497; June 12, 2007), and other work in progress, the PEER Committee will report to the 2008 Legislature on issues related to overlapping scopes of practice for Mississippi's mental health professionals, as well as contradictions and imprecision in laws related to scope of practice.

The Committee will also recommend to the 2008 Legislature that it create a task force made up of members from the Board of Examiners for Social Workers and Marriage and Family Therapists, the Board of Licensed Professional Counselors, and the Board of Psychology to make recommendations no later than November 1, 2008, to the PEER Committee that would remedy these problems, including necessary statutory revisions to existing law. The PEER Committee will report the efforts of the task force to the 2009 Legislature no later than January 1, 2009.

Potential for Compromised Independence of the Process for Nominating Board Members

2. The Legislature should amend MISS. CODE ANN. Section 73-53-8 (1972) to include a provision that no sitting member of the Board of Examiners for Social Workers and Marriage and Family Therapists may advise the Mississippi Chapter of the National Association of Social Workers (NASW) and the Mississippi Association of Marriage and Family Therapists (MAMFT) regarding board replacements. The board should also implement a rule mandating that if an individual is an officer of Mississippi Chapter of the NASW or MAMFT, as well as a sitting member of the Board of Examiners for Social Workers and Marriage and Family Therapists, he or she should recuse himself/herself from the nominating process.

Needed Improvements in the Licensure Process

3. The Legislature should amend MISS. CODE ANN. Sections 73-53-13 and 73-54-13 (1972) to require the following:

- that the board will conduct background checks on all applicants for licensure;
- that the board may request the assistance of the Department of Public Safety, as well as consulting sex offender registries, in checking criminal histories of applicants.

The Legislature should also amend MISS. CODE ANN. Section 73-53-13 (d) (iv) (1972) to delete the wording “related to the practice of social work for the last ten years” in terms of felonies, since all felonies committed should prevent someone from being licensed.

In addition, the Legislature should amend MISS. CODE ANN. Section 73-54-13 (1972). For purposes of background checks and licensure, “good moral character” shall be established by an absence of felony convictions or convictions for misdemeanors involving moral turpitude.

4. The Legislature should amend MISS. CODE ANN. Section 73-54-17 (1972) to:
 - delete any reference to the American Association for Marriage and Family Therapy;
 - enable the board to require supervised experience for marriage and family therapist licensure in an amount not to exceed 200 hours. (The applicant may possess more than 200 hours of supervised experience, but the board shall not require more than that amount for licensure); and,
 - allow the applicant’s hours of supervised experience to have occurred either prior to or subsequent to the first qualifying degree, or a combination thereof.
5. The board should analyze the criteria used on the supervisor’s evaluation forms for social workers and marriage and family therapists to verify that it is, indeed, the adequate objective criteria appropriate to measure certified social worker and marriage and family therapist clinical practice.

The board should also require supervisors to conduct practice evaluations to assure inter-rater reliability in evaluating applicants' supervised experience prior to licensure.

Issues Regarding Continuing Education of Licensees

6. The Legislature should amend MISS. CODE ANN. 73-53-15 (1972) to require social workers to complete continuing education in order to renew licenses.
7. To ensure licensees' compliance with provisions of MISS. CODE ANN. Section 73-54-27 (5) (1972) regarding completion of continuing education before license renewal for marriage and family therapists, the Board of Examiners for Social Workers and Marriage and Family Therapists should require that licensees submit documentation of completion of these requirements annually along with their renewal application and fee. Additionally, if the Legislature chooses to amend MISS. CODE ANN. Section 73-53-15 (1972) as recommended above, the Legislature should also amend Sections 73-54-27 (5) and 73-53-15 to give the board the expressed authority to conduct audits of licensees' continuing education as it deems necessary.

Inadequacies in Complaints and Disciplinary Processes

8. To establish a process for managing complaints against licensees, the board should implement the following:
 - maintain a *complete* log of complaints, adding a brief description and the status/disposition of the complaint;
 - develop written guidelines for recordkeeping of complaint information, including defining responsibilities of board members in the complaints process;
 - include in its written contracts with investigators the requirements for completing work within specific timeframes and reporting on milestones within those timeframes.

The board's rules and regulations should provide guidelines for maintaining thorough documentation, including a written explanation of the rationale for the disposition of the complaint, and general timeframes for each phase of the complaints process. The board should make a written record of any justification for extending an investigation beyond the timeframes specified in the rules and regulations.

9. As required by MISS. CODE ANN. Section 25-41-11 (1972), the board should maintain an accurate and complete record of all of its official actions in its minutes.
10. To comply with MISS. CODE ANN. §73-53-27 (5) (1972), the board should publish an annual list of the names and addresses of all social work licensees.

Also, the Legislature should amend state law to include the requirement of publishing an annual list of the names and addresses of all marriage and family therapist licensees as well.

11. The board should make information on final disciplinary orders and sanctions on both social workers and marriage and family therapists readily available to the public and licensees through the board's website. The board should maintain its website to reflect up-to-date information and increase its utility to the public.

The Legislature should amend state law to require publicizing the disciplinary orders and sanctions against marriage and family therapists.

12. The Legislature should expand the current chapter governing social workers to include the provisions contained in the Marriage and Family Therapy Licensure Act of 1997. In doing so, the Marriage and Family Therapy Licensure Act of 1997 should be repealed in its entirety. The authority to liberally construe the provisions in the marriage and family therapy statute should be repealed and not carried over to the combined chapter. Also, statutory authority should be given to the board to adopt the additional standards not found in either CODE section.

The board should determine which sections of the National Association of Social Workers' code of ethics are unambiguous and either change the wording of vague standards adopted by the board to

make them enforceable or eliminate the use of such vague standards.

Problems with Financial Management

13. The Board of Examiners for Social Workers and Marriage and Family Therapists should follow through with the actions that it reported to the State Auditor in 2003 that it would take relative to the agency's financial management, including:
 - having a board member conduct a monthly review of the cash receipts process to verify that all receipts are properly accounted for and deposited into the bank;
 - having a board member review the monthly bank statement reconciliations; and,
 - ensuring that board staff makes daily transfers of amounts in excess of \$1,000 from the bank clearing account to the State Treasury by the next business day.

14. The board should instruct the Executive Director to improve the agency's internal controls by:
 - having two staff members open the mail together and record the cash receipts each day;
 - reconciling cash received each day to renewal notices previously mailed to licensees; and,
 - having an employee other than the Executive Director (who writes checks on the agency's bank clearing account) reconcile the monthly bank statements.

Appendix A: The Board's Licensure Requirements Regarding Supervised Experience for Social Workers

The current board requirements of supervision for social workers include:

- A completed plan (or contract) for supervision between the social worker and the supervisor. A minimum of one hour per week face-to-face supervision for a minimum period of twenty-four months is required, for a minimum total of 100 hours. This period of supervision may not exceed thirty months. Written evaluations from the supervisor should be submitted to the board for review at six-month intervals. Evaluations should document personal growth and improvement in specific areas from one period to another.
- Supervisors must submit a termination of supervision contract form at the end of the supervision period. The Termination of Supervision form also verifies that the applicant has completed the required 100 hours and 24 months of supervision. The applicant seeking LCSW designation must submit with the final evaluation form and Termination of Supervision three form letters of reference from appropriate professionals that indicate that applicants' conduct is compatible with social work law and ethics and that there are no violations of standards of practice as set forth in the statute and regulations.
- Upon completion of all requirements, the LCSW applicant will be eligible to take his/her choice of the administrative (advanced) or clinical ASWB exam (whichever is applicable to his/her supervised experience).

SOURCE: Section B, "Rules and Regulations Specific to Social Workers," *Rules and Regulations Regarding the Licensure of Social Workers and Marriage and Family Therapists*.

Appendix B: The Board's Licensure Requirements Regarding Supervised Experience for Marriage and Family Therapists

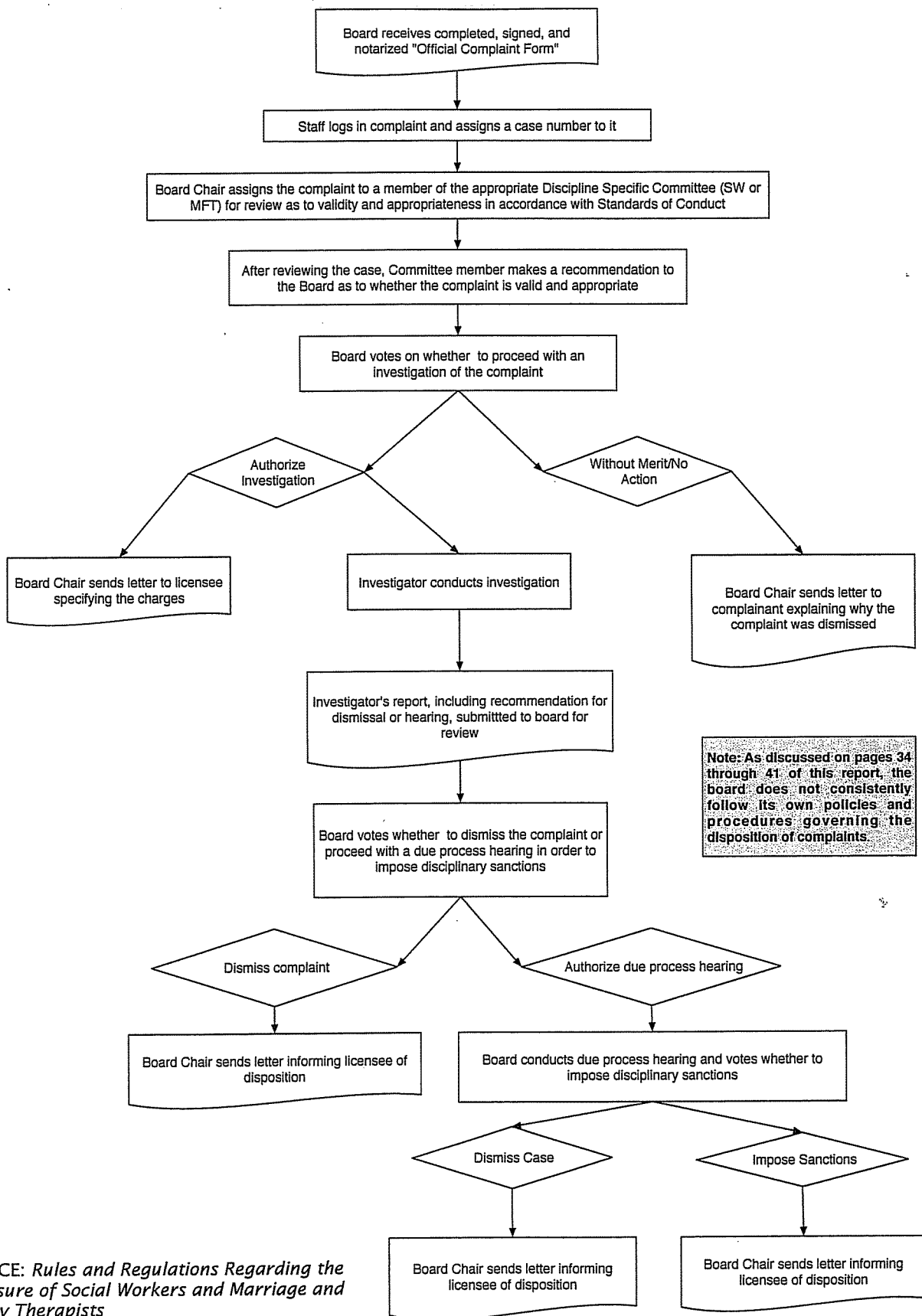
The current licensure requirements of the Board of Examiners for Social Workers and Marriage and Family Therapists regarding supervision, which the board defines as, "the direct clinical review, for the purposes of training or teaching by a supervisor, of the supervisee's interaction with a client," include:

- 200 hours of marriage and family therapy supervision. A minimum of 50 hours of the 200 hours of supervision must be individual supervision. At least 100 of these 200 hours must occur following receipt of the first qualifying graduate degree in marriage and family therapy and the board's approval of the applicant's supervision plan.
- Up to one year of a COAMFTE-approved doctoral internship may be counted toward the required two years of post-graduate supervised clinical experience.
- Up to 100 hours of clinical supervision accumulated during graduate training may be counted toward the required 200 hours of clinical supervision.
- At least 100 hours of the 200 hours of clinical supervision must be completed with an AAMFT approved supervisor.
- Plan of Supervision (including the Supervisor's Statement), the Application to Enter Into Contract for Supervision Toward Licensure as a Marriage and Family Therapist, and a non-refundable processing fee submitted to the board for approval. All plans of professional post-masters supervision must be approved by the board prior to the beginning of said supervision--i. e., no retroactive approval of professional supervision will be granted. The board reserves the right to request explanations or plans of correction related to the submitted Plan of Supervision at any point.
- Evaluations of the supervisee are to be completed on evaluation forms available from the board and submitted by the supervisor to the board in accordance with the following schedule:

- First is to be submitted ten to twelve months following the board approval of the Plan of Supervision.
 - Final to be submitted when supervision is complete (twenty-four to thirty-six months following board approval of the Plan of Supervision), accompanied by the Termination of Supervision Form, and completed Documentation of Supervision forms (all necessary forms are available from the board).
- The supervisory process requires a minimum of one hour per week or two hours biweekly of face-to-face supervision for a minimum period of twenty-four consecutive months. The period of supervision may not exceed thirty-six months. Under unusual circumstances (e. g., hurricane, disaster) a supervisee may apply for an extension of the supervisory process, which may be granted at the discretion of the board.
 - Acceptable modes of supervision are as follows:
 - individual supervision shall mean a maximum of two supervisees meeting with one supervisor.
 - group supervision shall mean a maximum of six supervisees meeting with one supervisor.

SOURCE: Section C, "Rules and Regulations Specific to Marriage and Family Therapists," *Rules and Regulations Regarding the Licensure of Social Workers and Marriage and Family Therapists*.

Appendix C: The Board's Complaints Process, According to its Rules and Regulations



SOURCE: *Rules and Regulations Regarding the Licensure of Social Workers and Marriage and Family Therapists*

Appendix D: Statutory Standards of Conduct for Social Workers, also Enforceable for Marriage and Family Therapists

MISS. CODE ANN. Section 73-53-17 (1972) contains standards of conduct for social workers that are also enforceable for marriage and family therapists:

- (1) *Licensees subject to this chapter shall conduct their activities, services and practice in accordance with this chapter and any rules promulgated pursuant hereto. Licensees may be subject to the exercise of the disciplinary sanctions enumerated in Section 73-53-23 if the board finds that a licensee is guilty of any of the following:*
 - (a) *Negligence in the practice or performance of professional services or activities;*
 - (b) *Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public in the course of professional services or activities;*
 - (c) *Perpetrating or cooperating in fraud or material deception in obtaining or renewing a license or attempting the same;*
 - (d) *Being convicted of any crime which has a substantial relationship to the licensee's activities and services or an essential element of which is misstatement, fraud or dishonesty;*
 - (e) *Being convicted of any crime which is a felony under the laws of this state or of the United States;*
 - (f) *Engaging in or permitting the performance of unacceptable services personally or by assistants working under the licensee's supervision due to the licensee's deliberate or grossly negligent act or acts or failure to act, regardless of whether actual damage or damages to the public is established;*
 - (g) *Continued practice although the licensee has become unfit to practice social work due to: (i) failure to keep abreast of current professional theory or practice; or (ii) physical or mental disability; the entry of an order or judgment by a court of competent jurisdiction that a licensee is in need of mental treatment or is incompetent shall constitute mental disability; or (iii)*

addiction or severe dependency upon alcohol or other drugs which may endanger the public by impairing the licensee's ability to practice;

- (h) Having disciplinary action taken against the licensee's license in another state;*
 - (i) Making differential, detrimental treatment against any person because of race, color, creed, sex, religion or national origin;*
 - (j) Engaging in lewd conduct in connection with professional services or activities;*
 - (k) Engaging in false or misleading advertising;*
 - (l) Contracting, assisting or permitting unlicensed persons to perform services for which a license is required under this chapter;*
 - (m) Violation of any probation requirements placed on a licensee by the board;*
 - (n) Revealing confidential information except as may be required by law;*
 - (o) Failing to inform clients of the fact that the client no longer needs the services or professional assistance of the licensee;*
 - (p) Charging excessive or unreasonable fees or engaging in unreasonable collection practices.*
- (2) The board may order a licensee to submit to a reasonable physical or mental examination if the licensee's physical or mental capacity to practice safely is at issue in a disciplinary proceeding.*
- (3) Failure to comply with a board order to submit to a physical or mental examination shall render a licensee subject to the summary suspension procedures described in Section 73-53-23.*
- (4) In addition to the reasons specified in subsection (1) of this section, the board shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or*

93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SOURCE: MISS. CODE ANN. Section 73-53-17 (1972).

Appendix E: Additional Statutory Grounds for Disciplinary Action for Marriage and Family Therapists

MISS. CODE ANN. Section 73-54-29 (1972) states the grounds for disciplinary sanction [repealed effective July 1, 2011]:

Licensees subject to this chapter shall conduct their activities, services and practice in accordance with this chapter and any rules promulgated pursuant under this chapter. Licensees may be subject to the exercise of the disciplinary sanctions enumerated in Section 73-53-23 if the board finds that a licensee is guilty of any of the actions listed in Section 73-53-17(1) or is guilty of any of the following:

- (a) Violation of any provision of this chapter or any rules or regulations of the board adopted under the provisions of this chapter.*
- (b) Other just and sufficient cause which renders a person unfit to practice marriage and family therapy as determined by the board but not limited to:
 - (i) Habitual use of alcohol or drugs to an extent that affects professional competence;*
 - (ii) Adjudication as being mentally incompetent by a court of competent jurisdiction;*
 - (iii) Practicing in a manner detrimental to the public health and welfare;*
 - (iv) Revocation of a license or certification by a licensing agency or by a certifying professional organization; or*
 - (v) Any other violation of this chapter or the code of ethical standards of the American Association for Marriage and Family Therapy or other ethical standards adopted by the board under the provisions of this chapter.**

SOURCE: MISS. CODE ANN. Section 73-54-29 (1972).



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August 13, 2007

Max Arinder
Executive Director
Joint Legislative Committee
on Performance Evaluation and Expenditure Review
Post Office Box 1204
Jackson, MS 39215 – 1204

Dear Mr. Arinder:

Thank you for the opportunity to respond to the report on the Mississippi Board of Examiners for Social Workers and Marriage and Family Therapists. Your evaluation has brought to light several points this Board will need to address. This Board's comments on your recommendations are listed below:

Recommendation 1: Overlap in the Scope of Professions

There exists an inherent overlap in the scope of practice of various professions such as Social Workers and Psychologists, Licensed Professional Counselors and Marriage and Family Therapists, Psychiatrists and Psychologists, Architects and Engineers, Massage Therapists and Chiropractors, and Physical Therapists and Chiropractors. While there is overlap in many professions, the professions are nevertheless distinct and separate. Recognizing this overlap yet distinct identity in professions, the Legislature generally set up exemptions in a licensure act for individuals who are licensed or certified by other professions.

For example:

Under 73-53-5(1) --

(1) No provision in this chapter shall be construed to prevent individuals licensed or certified by this state, whose activities overlap with the practice of social work, from carrying out the



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functions covered by their respective licenses or certificates, or to prevent ministers or individuals engaged in professional counseling who have recognized professional degrees in counseling, guidance or a related counseling field, whose activities overlap with the practice of social work, from carrying out the functions for which they have been trained, provided that such ministers or individuals shall not hold themselves out to the public by any title set out in this chapter.

73-54-9(2) provides that –

Nothing in this chapter shall prevent licensed or certified members of other professional groups as defined by their board, including, but not limited to, physicians, psychologists, clinical nurse specialists, clinical social workers, licensed professional counselors, or duly ordained ministers or clergy while functioning in their ministerial capacity, from doing or advertising that they perform work of a marriage and family therapy nature consistent with the accepted standards of their respective professions.

73-31-27(1)(d) --

The services and activities of members of other professional groups licensed or certified by the State of Mississippi who perform work of a psychological nature consistent with their training, work experience history, and with any code of ethics of their respective professions, provided they do not hold themselves out to be psychologists. The practice of psychology as defined by this act overlaps with the activities of other professional groups and it is not the intent of this act to regulate the activities of these professional groups.

The practice of psychotherapy is within the scope of practice of social

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workers, marriage and family therapists, and psychologists.

Recommendation 2: Appointment of Board Members

The appointment of board members is specifically provided for by state statute. Under the statute, this appointment is left to the Governor and Lieutenant Governor with the advice and consent of the Senate. The Board has no role in the appointment of board members. It can only regulate the services, activities, and practice of the profession of social work and marriage and family therapy. Therefore, if the appointment process has the potential for compromise as found by PEER, this would be more appropriately a matter to be addressed by the Legislature.

The Board is receptive to adopting a rule such as that recommended by PEER. However, the Board does not understand how such a rule can be enforced by the Board when the Board has been given no authority over the appointment or nominating process.

Recommendation 3: Licensure Process

The question of good moral character is determined on a case by case basis in accordance with Sections 73-53-13(d) and 73-54-13(a) of the Mississippi Code of 1972, as amended. Although good moral character is not defined by the Legislature or in Board rules, the phrase has been made constitutionally certain by case law in terms of a person lacking moral turpitude. In looking at good moral character, the Board has turned to this case law which defines good moral character as the absence of acts which have been historically considered as the manifestation of moral turpitude. Moral turpitude, in turn, has had to be defined using case law as a further guide. Using case law, the Board has considered moral turpitude as involving conduct or a pattern of conduct involving misrepresentation, fraud, deceit, or other actions that tend to disrupt, diminish or otherwise jeopardize public trust in the profession.

Whether using the term good moral character or the absence of moral turpitude, the Board's determination regarding an applicant must be made on a case by case basis. If the facts bring into question an applicant's good moral



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character or the moral turpitude of an applicant, the Board must afford, and has afforded, the applicant an opportunity for a hearing to demonstrate his or her good moral character as defined by case law. Because of this due process requirement observed by the Board and the use of case law as a guide in determining moral character, the Board has measures in place to safeguard against judging applicants inconsistently or allowing unsuitable applicants to become licensed.

The Board is exploring options regarding background checks for licensees.

Recommendation 4: Experience Requirements for Licensure

According to the Board's rules, the individual is required to complete 200 hours of supervision, of which 50 hours must be individual supervision. The law ties AAMFT requirements to clinical supervision or experience. The Board rules, therefore, have one provision dealing with clinical supervision as required by AAMFT and another provision dealing with the 100-minimum requirement of Section 73-54-17(a)(iii). Changes to the law will assist them in coinciding with the Board's rules.

Recommendation 5: Evaluation of the Supervised Experience

The Board has established professional supervision requirements intended to enhance professional development and competencies of both persons – the supervisor providing supervision as well as the applicants themselves. Supervisory qualifications and responsibilities are defined in the Board rules. Because supervision is an evolving process, the Board has allocated resources for training social workers and marriage and family therapist supervisors in the Spring 2008. The training should enhance supervisory skills, resulting in an increase in inter-rater reliability in the evaluation process. Guides

for the supervision process have been established and provided to applicants and supervisors, which assist in reliability of the evaluation process.

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Recommendation 6 and Recommendation 7: Continuing Education

The Board disagrees with the finding that it cannot impose continuing education requirements on social workers. Administrative agencies are created by the legislature and have only such powers as are expressly granted to them or necessarily implied. *Strong v. Bostick*, 420 So. 2d 1356 (Miss. 1982); *Mississippi Milk Commission v. Winn-Dixie*, 235 So. 2d 684 (Miss. 1970). Section 73-53-11(5) of the Mississippi Code of 1972, as amended, gives the Board "such powers as may be required to carry out the provisions of this chapter." Among the provisions of the chapter are Sections 73-53-15, 73-53-17(1) and 73-53-17(1)(g).

Section 73-53-15 specifically conditions the renewal of a social worker's license upon the payment of the applicable fees plus compliance with such additional requirements as the Board shall promulgate. An additional requirement promulgated by the Board is that continuing education is a prerequisite to licensure renewal. Section 73-53-17(1) makes a licensed social worker's activities, services and practice subject to any rule promulgated by the Board. Under Section 73-53-17(1)(g), the Board can discipline a licensee for continued practice when he or she has become unfit to practice social work due to the failure to keep abreast of current professional theory practice. As a practical matter, the Board cannot carry out this provision unless the Board can require the social worker to adhere to continuing education activities. Reading these statutes together, the Board does have the authority to promulgate rules and regulating requiring continuing education for social workers.

Section 73-53-11(3), then, gives the Board the power to enforce actions against licensees for violations of the provisions under the social worker licensing statutes and the continuing education rules promulgated in furtherance of the above described statutory provisions.

As a condition of license renewal, the Board ensures that marriage and family therapists receive continuing education through the use of self-attestation



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statements which are sworn to by the licensee under penalty of perjury. If the Board finds such attestation to be untrue, the licensee is subject to the disciplinary power of the Board, which could include revocation of license, suspension of license or the licensee being placed on probation. In this regard, it should be kept in mind that even if the audit is done before license renewal, renewal of license cannot be denied without the licensee being afforded the same due process as that required for one whose self-attestation may be found to be untrue.

Recommendation 8 and Recommendation 9: Complaint Process

The Board disagrees that it does not have effective systems for managing complaints. The Board's complaint process does contain milestones and appropriate time lines as defined: mailing complaint forms; filing complaints; review of complaints by the discipline specific committee member; determination of whether the board has jurisdiction; recommendations regarding investigation; notice to the licensee (if investigation is deemed warranted), assignment of an investigator to the complaint; performance of the investigation; filing of an investigative report; recommendation regarding formal resolution of complaints; written notice of the hearing to the licensee at least 30 days prior to hearing when a formal complaint is initiated by the Board; holding the hearing, and rendering a decision within 30 days of the hearing. The Board does agree that its investigator's contract should be tailored to provide more specific time frames and reporting to the Board's office or discipline specific committee member. The Board has begun a review of its contractual agreement to this end.

The Board's complaint process has been an evolving process. Around 2001, the Board began maintaining a complaint file report, identifying complaints by assigned numbers which have corresponding licensee names on a complaint log and complaint files. This complaint file report also contains case status including whether assigned to an investigator and resolution, assigned discipline specific board member, and date of origin. The complaint file report is shared with the Board at each meeting. The specifics of the complaint are not to be revealed to the full Board until the hearing or resolution of the complaint in order to preserve the impartiality of the Board should the full Board be called to hear

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the complaint. The complaint file report, which bears the meeting date, is referenced in the minutes and can be pulled by referring to the minutes.

Recommendation 10 and Recommendation 11: Publication of Licensees

There has been no revocation or suspension of social work licenses within the preceding 12 months. There is no requirement for the Board to publish disciplinary actions other than as provided in 73-53-27(5) regarding social workers whose licenses have been suspended or revoked. However, in disciplining licensees, the Board's orders provide that the information is public. Pursuant to the Mississippi Public Records Act, the public may seek disclosure of disciplinary action taken by the Board. In furtherance of public disclosure, the Board has adopted rules and regulations, which are published on the Board's website and filed with the Mississippi Secretary of State office, advising the public how to obtain information from the Board. The Board's contact information is also listed on the website and at the Secretary of State office.

The names of social workers and marriage and family therapists are available to the public upon request and payment of the applicable fee as allowed by the Mississippi Public Records Act.

The Board has entered into a contractual agreement with ITS to enhance the MSBOE website, which will provide the Board with an efficient, cost effective, and up to date means to deliver this information to the public.

Recommendation 12: Rules and Regulations Governing Standards of Conduct

For the reasons previously state, the Board has the authority to promulgate rules governing standards of conduct. This authority is granted pursuant to 73-53-11(3), 73-53-11(5) and 73-53-17(1). These statutory sections give the Board the power to do any and all things necessary to regulate licensees in the conduct of their activities, services, and practice.

The standards of conduct set forth in the Board's rules relate to the licensee's activities, services and practices.



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The NASW Code of Ethics is not viewed in the abstract. But, the Code is read together with other NASW guides and standards dealing with ethical issues or dilemmas in social work practice.

Marriage and Family Therapy and Social Work are distinct professions, and should be recognized as distinct professions by statute. Marriage and Family Therapy and Social Work are distinct professions, and should be recognized as distinct professions by statute.

Recommendations 13 and 14: Financial Management

Monthly, the Board reviews the expenditures for the Board. A Board member reviews and approves all payment vouchers. The Board and staff are currently taking action to comply with the 2003 State Auditor report.

Other: Maintaining Licensure Information

The Board's licensure database is not accessible to the public. When the Board's verifies information about a licensee's status, it does so by the expiration date of the license. The database does contain the expiration of licenses. The Board does not use designation such as active or inactive. Moreover, the Board, by rule, requires licensees to post the license certificate in their place or places of practice, which contains the expiration date of licensure.

Thank you for the professional manner in which you have approached this evaluation. If we may be of further assistance, please contact us at (601) 987-6806.

Sincerely,

Charles West, LMFT
 Board Chair

CW:bd

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